LAURENCE J. RAPPAPORT, Individually and as a Member of Rapad Real Estate Management, LLC, KABR Management, LLC, KABR Management II, LLC, KABR Management III, LLC, and KABR IV Management, LLC, *Plaintiff-Respondent,* v. KENNETH PASTERNACK, Individually and as a Member of Rapad Real Estate Management, LLC, KABR Management, LLC, KABR Management II, LLC, KABR Management III, LLC, and KABR Management IV, LLC; ADAM ALTMAN, Individually and as a member of Rapad Real Estate Management, LLC, KABR Management, LLC, KABR Management II, LLC, KABR Management III, LLC, and KABR Management IV, LLC; (*continued on next page*)	SUPREME COURT OF NEW JERSEY DOCKET NO. 088645 CIVIL ACTION On Petition for Certification from the Final Judgment of the Superior Court of New Jersey, Appellate Division, Docket No. A-000491-21 Docket No. A-000492-21 Sat Below: Hon. Richard J. Geiger, J.A.D. Hon. Ronald Susswein, J.A.D. Hon. Maritza B. Byrne, J.A.D.

BRIEF OF AMICUS CURIAE THE NEW JERSEY CIVIL JUSTICE INSTITUTE

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Defendants-Petitioners.

LAURENCE J. RAPPAPORT, Individually and as a Member of KABR Management, LLC, and KABR Management II, LLC,

Plaintiff-Respondent,

v.

KENNETH PASTERNAK, Individually and as a Member and Manager of KABR Management, LLC and KABR II, LLC; ADAM ALTMAN, Individually and as a Member and Manager of KABR Management, LLC and KABR II, LLC; THE SARA PASTERNACK 2008

IRREVOCABLE TRUST, as a Member and Manager of KABR Management, LLC and KABR Management II, LLC; THE RACHEL PASTERNAK 2008 IRREVOCABLE TRUST, as a Member and Manager of KABR Management, LLC and KABR Management II, LLC; and THE DANIEL PASTERNAK 2008 IRREVOCABLE TRUST, as a Member and Manager of KABR Management, LLC and KABR Management II, LLC,

Defendants-Petitioners.

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STATEMENT OF INTEREST OF AMICUS CURIAE

The New Jersey Civil Justice Institute ("NJCJI") submits the following brief in support of Defendants-Petitioners ("Defendants"). NJCJI is a non-profit, non-partisan organization that advocates for predictability, efficiency, and fairness in our State's civil justice system. These touchstones result in lower litigation costs, support consistency in verdicts and settlements, and improve access to our courts.

NJCJI has a strong interest in the clear, predictable, and fair application of the law and is concerned with the broader civil justice implications that cases—particularly those involving arbitration—may have on businesses and enterprises in this State. Founded in 2007, NJCJI is a statewide advocacy group consisting of many of the State's largest businesses, business associations, and professional organizations. In that capacity, NJCJI participates as amicus curiae in matters of interest to its membership. In recent years, NJCJI has appeared as amicus curiae before this Court in important consumer and tort litigation, including Desimone v. Springpoint Senior Living, Inc., 256 N.J. 172 (2024); Dennehy v. East Windsor Regional Board of Education, 252 N.J. 201 (2022); Estate of Narleski v. Gomes, 244 N.J. 199 (2020); Spade v. Select Comfort Corp., 232 N.J. 504 (2018); and Dugan v. TGI Fridays, Inc., 231 N.J. 24 (2017). NJCJI and its members believe that a fair civil justice system efficiently resolves disputes based solely upon application of the law to the facts of each case, while simultaneously affording

appropriate respect towards the outcomes resulting from alternative dispute resolution. Such a system fosters public trust and motivates professionals, sole proprietors, businesses, and employers to provide better services and products, while ensuring that injured individuals are fairly compensated.

NJCJI's interest in the instant case stems from its efforts to ensure fairness in the law and predictable results in matters affecting its members, particularly when cases impact access to arbitration and other forms of alternative dispute resolution. To further its members' interest in the clear and predictable application of the law, NJCJI seeks leave to participate as amicus curiae in this matter given the significance of the questions presented to its members.

PRELIMINARY STATEMENT

NJCJI respectfully urges the Court to reverse the Appellate Division's order modifying the arbitration award and to hold that the strong presumption in favor of effectuating arbitration awards requires judicial deference to arbitrators' findings. NJCJI advances two main arguments in favor of its position. First, relevant, longstanding, federal precedent supports imposing a narrow scope of review upon courts addressing arbitration awards. Like New Jersey, our sister courts in federal jurisdictions have long held that arbitration awards are presumed valid and that they will be enforced in all but the narrowest and most egregious of circumstances. In short, federal courts accord extreme deference to arbitrators. Critically, with

respect to the vacatur and modification of arbitration awards, federal courts, including the Third Circuit Court of Appeals, have consistently held that so long as an arbitrator's findings and ultimate award can derive a rational basis from either the agreement of the parties or the parties' submissions to the arbitrator, it must be confirmed. By contrast, the Appellate Division in this case improperly delved into the record before the arbitrator to conduct its own de novo review of the record, and in so doing erroneously supplanted the arbitrator's findings with its own. Such a probing review of the record and second-guessing of findings fails to accord sufficient deference to the arbitrator and warrants reversal.

Second, if the Appellate Division's decision is affirmed it will erode one of the most important characteristics that make arbitration an effective and appealing form of alternative dispute resolution—finality. As both New Jersey and federal courts have recognized, arbitration offers parties an effective, expedient, and low-cost vehicle for resolving disputes outside of litigation, and it affords individuals the opportunity to tailor the dispute resolution process to meet their needs. However, finality is the lynchpin of all these benefits, and the Appellate Division's failure to accord deference to the arbitrator in this case guts that finality. Said differently, if arbitration becomes merely a springboard to civil litigation rather than a substitute, the benefits of arbitration disappear, and parties will be less likely to structure contracts and disputes around arbitration. The result will be more

litigation entering our courts and, thus, greater burdens on our civil justice system.

For the foregoing reasons, NJCJI respectfully submits that the Court should reverse the decision below and reinstate the arbitration award.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

NJCJI relies upon and incorporates by reference the Facts and Procedural History as presented by Defendants in their Supplemental Brief. See Db4-20.

LEGAL ARGUMENTS

POINT I

PERSUASIVE FEDERAL AUTHORITIES SUPPORT THE CONCLUSION THAT THE APPELLATE DIVISION FAILED TO SHOW DUE DEFERENCE TO THE ARBITRATOR'S FINDINGS AND AWARD

NJCJI adopts and incorporates by reference the arguments set forth by Defendants in their supplemental brief. See Db20-36. NJCJI writes separately to respectfully submit that, in addition to our own State's relevant legal authorities, federal law supports ruling that the Appellate Division erred by modifying the arbitration award. The Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq.—which is nearly identical to the New Jersey Arbitration Act ("NJAA"), N.J.S.A. 2A:23B-1 et. seq.—as well as salient federal case law, mandate that courts must show extreme deference to arbitrator's findings and awards. As a result, in federal courts, the scope of judicial review concerning arbitration awards is intentionally

narrow to prevent arbitration losers from obtaining the proverbial "second bite at the apple" by relitigating previously arbitrated claims in court.

Indeed, that narrow scope of review is not an accident, but rather is the result of a strong national policy, established by Congress—and mirrored in the NJAA—to promote arbitration as an efficient, effective, and viable substitute to judicial dispute resolution. Given the shared goals of the NJAA and the FAA, NJCJI respectfully submits that the Court should read our State's arbitration laws in harmony with federal law. In that vein, persuasive federal authorities provide that so long as an arbitrator's findings and award can derive some rational basis in the parties' arbitration agreement or submissions to the arbitrator, the award must be enforced without modification. NJCJI respectfully urges the Court to hold that the Appellate Division erred by straying from the narrow scope of review applicable to arbitration awards when it modified the award in this case.

A. Like the NJAA, Federal Arbitration Law Imposes a Strong, National Presumption Favoring the Enforcement of Arbitration Awards

Here, the FAA—which is virtually identical to our NJAA—as well as relevant federal decisions evince a strong policy favoring arbitration and affording arbitration awards a presumption of validity. Indeed, federal law is instructive on the limited role courts play in confirming arbitration awards. Contrary to that limited role, the Appellate Division in the instant case exceeded the appropriate scope of review and conducted its own, independent review of the record,

improperly second-guessing the arbitration award. This result is contrary to both the law of New Jersey as well as relevant federal authorities and must be reversed.

"The [FAA] and the nearly identical [NJAA] enunciate federal and state policies favoring arbitration." Atalese v. U.S. Legal Services Group, L.P., 219 N.J. 430, 440 (2014). "New Jersey codifies its approach toward arbitration in the [NJAA] using terms nearly identical to those of the FAA." Kernahan v. Home Warranty Adm'r of Florida, Inc., 236 N.J. 301, 319 (2019) (citing Roach v. BM Motoring, LLC, 228 N.J. 163, 173-74 (2017)). Ultimately, "[t]he statutory policies of the FAA and New Jersey law are in synchronicity" Id. at 319.

As this Court previously recognized, "[t]he public policy of this State favors arbitration as a means of settling disputes that otherwise would be litigated in a court." Badiali v. New Jersey Mfrs. Ins. Group, 220 N.J. 544, 556 (2015); see also Martindale v. Sandvik, Inc., 173 N.J. 76, 92 (2002) ("[T]he affirmative policy of this State, both legislative and judicial, favors arbitration as a mechanism of resolving disputes."). As such, "there is a strong preference for judicial confirmation of arbitration awards." Linden Bd. of Educ. v. Linden Educ. Ass'n, 202 N.J. 268, 276 (2010). Similarly, "[t]he [FAA] expresses a national policy favoring arbitration." Morgan v. Sanford Brown Inst., 225 N.J. 289, 304 (2016). Like the NJAA, the FAA imposes "a strong presumption . . . in favor of enforcing arbitration awards," see Brentwood Medical Assocs. v. United Mine Workers, 396

F.3d 237, 241 (3d Cir. 2005). As such, it is unsurprising that under both New Jersey and federal law, the starting point for any review of an arbitration award is a presumption of validity. See Local No. 153, Office & Prof. Employees Int'l Union v. Trust Co. of New Jersey, 105 N.J. 442, 448 (1987) (stating that "[a]rbitration awards are favored by courts and are generally presumed to be valid"); Brentwood, 396 F.3d at 241 (noting that "an [arbitration] award is presumed valid unless it is affirmatively shown to be otherwise").

Here, the presumption of validity applicable to arbitration awards under both New Jersey and federal law requires courts to apply a narrow scope of review to arbitrations. Indeed, relevant, federal legal authorities limit courts to a limited role in the confirmation of arbitration awards, permitting courts to set aside or modify those awards only in the most egregious and obvious of cases.

B. Under Federal Law, Deference to Arbitration Awards is Mandatory, Imposing a Narrow Scope of Judicial Review

As set forth above, similar to New Jersey authorities, federal law mandates that courts presume that arbitration awards are valid, permitting vacatur or modification only under a limited set of circumstances. Indeed, in furtherance of the strong presumption of validity, federal law requires that courts accord extreme deference to arbitrators and their awards, imposing a narrow scope of judicial review. Here, the Appellate Division erred by exceeding the appropriate standard of review, warranting reversal and reinstatement of the arbitrator's award.

Given the "strong presumption under the [FAA] in favor of enforcing arbitration awards," federal courts review arbitration awards "under an extremely deferential standard, the application of which is generally to affirm easily the arbitration award." Hamilton Park Health Care Ctr. Ltd. v. 1199 SEIU United Healthcare Workers E., 817 F.3d 857, 861 (3d Cir. 2016) (internal quotation marks omitted). As a result, parties seeking to overcome that deferential standard and obtain "relief" from an arbitration award "must clear a high hurdle." Stolt-Nielsen S.A. v. Animal Feeds Int'l Corp., 559 U.S. 662, 671 (2010).

Therefore, "it is [a court's] duty to resist the urge to conduct a de novo review of the [arbitration] award on the merits." Brentwood, 396 F.3d at 241; see also United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 36 (1986) (observing in the context of labor arbitration that "courts are not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of a contract"). "Review of arbitration awards is 'extremely deferential' and vacatur is appropriate only in the 'exceedingly narrow' and exclusive circumstances delineated in Sections 10 and 11 [of the FAA]." Southco Inc. v. Reell Precision Mfg. Corp., 556 F. Supp. 2d 505, 509 (E.D. Pa. 2008) (citing Hall St. Assocs., L.L.C. v. Mattel, Inc., 552 U.S. 576, 584-85 (2008); Sherrock Brothers, Inc. v. Daimler Chrysler Motor Company, LLC, 260 Fed Appx. 497 (3d Cir. Jan. 7, 2008); Parsons Energy and Chemicals

Group, Inc. v. Wiliams Union Boiler, 128 Fed. Appx. 920, 925 (3d Cir. April 25, 2005)); see also 9 U.S.C. § 10 (setting forth grounds for vacatur of arbitration awards); 9 U.S.C. § 11 (setting forth grounds for modification or correction of arbitration awards). Indeed, "an arbitrator's 'improvident, even silly, fact-finding does not provide a basis for a reviewing court to refuse to enforce the award.'" Southco, Inc., 556 F. Supp. 2d at 509-10 (quoting Metromedia Energy, Inc. v. Enserch Energy Services, 409 F.3d 574, 578 (3d Cir. 2005)).

"This is because the [c]ourt's role in reviewing the outcome of arbitration proceeding is not to correct factual or legal errors made by an arbitrator and courts should not re-weigh the evidence" in deciding whether to confirm an award. Id. at 510. "In other words, 'there must be absolutely no support at all in the record justifying the arbitrator's determination for a court to deny enforcement of the award.'" Parsons, 128 Fed. Appx. at 925 (quoting News Am. Pub. v. Newark Typographical Union, 918 F.2d 21, 24 (3d Cir. 1990)). Summarizing the judiciary's role in confirming arbitration awards, the Third Circuit has stated:

> [A] court may not review the merits of the arbitral decision. A court does not review the award to ascertain whether the arbitrator has applied the correct principles of law. An arbitral award may not be overturned for factual error, or because the court disagrees with the arbitrator's assessment of the credibility of witnesses, or the weight the arbitrator has given to testimony.
>
> [News Am., 918 F.2d at 24 (internal citations omitted).]

Ultimately, "the test used" by courts "to probe the validity of" an arbitration award "is a singularly undemanding one." Ibid.

Critically, federal courts have found that where a party seeks judicial review of an arbitration award on the basis that the arbitrator decided issues that were not submitted to the arbitrator, judicial deference to awards still applies. In Brennan v. CIGNA Corp., the Third Circuit was asked to decide whether an arbitrator improperly awarded emotional damages to two employees for claims arising from racial discrimination. 282 Fed. Appx. 132, 133 (3d Cir. June 18, 2008). The defendants argued that the arbitrator's award should be set aside because it addressed "hostile work environment" claims "not before him." Id. at 136.

Reflecting on the metes and bounds of an arbitrator's authority, in Brennan, the Third Circuit observed that "[a]n arbitrator has the authority to decide only the issues that have been submitted for arbitration by the parties," but that "where an arbitration award rationally can be derived from either the agreement of the parties or the parties' submission to the arbitrator, it will be enforced." Id. at 136-37 (citing Certain Underwriters at Lloyd's London v. Westchester Fire Ins. Co., 489 F.3d 580, 584 (3d Cir. 2007); Acands, Inc. v. Travelers Cas. and Sur. Co., 435 F.3d 525, 258 (3d Cir. 2006)). The Third Circuit explained that this was because "review of the interpretation of a submission to an arbitrator and to the arbitrator's award is highly deferential." Id. at 137. Courts must "presume that an arbitrator

acted within the scope of his authority, and that presumption may not be rebutted by an ambiguity in a written opinion." Ibid. Indeed, the Third Circuit held that "only where it is obvious from a written opinion that the arbitrator exceeded his authority may [courts] so conclude." Ibid.

Turning to the facts of the case before it, the Third Circuit found that the arbitrator's damages award "rationally can be derived from the parties' submission to the arbitrator, which took the form of [an] amended complaint." Ibid. The Third Circuit found that the "entire crux of the amended complaint is the allegation that black employees were treated differently than white employees," and that "[t]he arbitrator's award for emotional damages 'relating to discriminatory treatment' rationally can be derived from the parties' submission to the arbitrator." Ibid. The defendants argued that because the amended complaint did not specifically mention a "hostile work environment," which the arbitrator discussed in portions of his opinion, the arbitrator acted beyond the matters submitted. Ibid.

However, the Third Circuit rejected this argument, finding that it was "not obvious from the opinion that the arbitrator acted outside the scope of his authority." Ibid. The Third Circuit noted that while the arbitrator did use the phrase "hostile work environment" twice in his written opinion, it found that "reading that opinion in its entirety it is clear that the arbitrator found that [the two plaintiffs] were subjected to racially disparate treatment . . . the very claim at the

heart of plaintiffs' amended complaint and the submission to the arbitrator." Ibid. Ultimately, the Third Circuit held that this did "nothing more than arguably create an ambiguity insufficient to overcome the presumption that the arbitrator acted within the scope of his authority." Ibid.

In the instant case, the Appellate Division's decision strayed far from the extremely deferential standard of review advised by both New Jersey case law and federal authorities. Rather than limiting itself to determining whether the arbitrator's award could be rationally derived from the parties' Arbitration Agreement, the Appellate Division engaged in a probing review of the record and supplanted the arbitrator's findings with its own. Such an outcome cannot stand.

C. Based on Both New Jersey Case Law, as well as Relevant Federal Authorities, the Appellate Division Erred by Supplanting the Arbitrator's Findings With Its Own

Here, as set forth in more detail in the Defendant's supplemental briefs, see Db27-35, rather than accord the arbitrator's decision the extreme degree of deference required under New Jersey law, the Appellate Division conducted a de novo review of the record to find a basis for modifying the award under N.J.S.A. 2A:23B-24(a)(2). However, neither New Jersey nor federal law commit the power to conduct such a probing review to courts addressing arbitration awards. Rather, the relevant authorities place substantial guardrails around the powers of courts weighing arbitration awards—guardrails the Appellate Division disregarded.

In the instant case, after conducting an extensive review of the arbitration record, the Appellate Division found that modification of the arbitration award was necessary under N.J.S.A. 2A:23B-24(a)(2) because the question of Plaintiff's ownership interest in certain entities had not been submitted for arbitration. Citing directly to the record before the arbitrator, including, *inter alia*, pre-trial briefings, testimony taken during the arbitration proceeding, as well as the purported absence of "testimony regarding [Plaintiff']s equity interest," the Appellate Division found that Plaintiff's "interest as an investor was not a claim raised in arbitration." See Rappaport v. Pasternak, Nos. A-0491-21, A-0492-21 (App. Div. Aug. 11, 2023) (slip op. at 25-31).

Here, the Appellate Division's exacting review of the record strayed far from the deferential standard required under both New Jersey and federal law. As the Third Circuit cautioned in Brennan, "where an arbitration award rationally can be derived from either the **agreement of the parties** or the parties' submission to the arbitrator, it will be enforced." 282 Fed. Appx. at 136-37 (emphasis added). Crucially, the parties' Arbitration Agreement explained the nature of the arbitration:

> Whereas, the parties wish to fully and finally resolve their dispute related to the Claim and Counterclaim, and related matters, **included but not limited to, any claims that could be asserted by any Party as part of the Claim or the Counterclaim or with respect to the dissolution or disassociation of [Plaintiff] from,** or [Plaintiff]'s

> employment with [Defendant Entities] . . . by submitting their claims and defenses to arbitration.
>
> [(Pa197) (emphasis added).]

The Arbitration Agreement provided that "[t]he scope of the arbitration shall be confined to adjudicating the Claim, Counterclaim, and related matters, including but not limited to … any claims that could be asserted by any Party as part of the Claim or the Counterclaim or with respect to the disassociation of [Plaintiff]."

As explained by Defendants in their briefing, the Arbitration Agreement that the parties executed broadly permitted the arbitrator to decide "any claims that could be asserted by any Party . . . with respect to the dissolution or dissociation of [Plaintiff]" from the relevant entities. See Db28. Moreover, Plaintiff and Defendants both raised this issue in their briefs, during testimony, and during oral arguments before the arbitrator. See Db7-11. As in Brennan, the arbitrator's determination that "the $4.9 million Award represents full, just and complete compensation to [Plaintiff] for his damages . . . both as manager and member" of the Defendant entities, see Pa2286-98, "rationally can be derived from either the agreement of the parties [and] the parties' submission to the arbitrator," see 282 Fed. Appx. at 137. Said differently, it was "not obvious from the opinion that the arbitrator acted outside the scope of his authority," see ibid., and as a result, the arbitration award should be enforced.

Further compounding the Appellate Division's error is the fact that in the Arbitration Agreement the parties specifically entrusted the arbitrator with determining which claims had been submitted to him. Here, the Arbitration Agreement provided that it would be governed by, among other things, Rule 7(a) of the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"). See Pa198. AAA Rule 7(a) provides that "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim." See Pa1644. As such, the parties agreed that any dispute concerning the matters submitted to the arbitrator would be decided by the arbitrator in the first instance.

As the Third Circuit observed in Metromedia, courts have roundly "rejected the argument that lesser deference should be accorded to an arbitrator's interpretation of the scope of a submission," as well as "the argument that lesser deference should be accorded to an arbitrator's assessment of the scope of his own authority where such an assessment was based upon the arbitrator's factual determinations concerning which issues were actually submitted by the parties." 409 F.3d at 579. As described by Defendants in their briefing, see Db30-32, far from deferring to the arbitrator's factual findings concerning the matters before him, the Appellate Division conducted a de novo review of the arbitration record,

during which it substituted its own findings for that of the arbitrator. As a result, the Appellate Division independently concluded that Plaintiff's claims to carried interest were beyond the scope of the arbitration.

However, such second-guessing of the arbitrator's findings falls short of the appropriate standard of review. The function of a court addressing an arbitration award "is not to correct factual or legal errors made by an arbitrator," even in the face of "an arbitrator's 'improvident, even silly, fact-finding.'" Southco, Inc., 556 F. Supp. 2d at 509-10 (quoting Metromedia, 409 F.3d at 578). Here, far from being "improvident" or "silly," the arbitrator's findings were well-reasoned and derived from 13 days of hearings, innumerable briefs and documentary evidence, as well as countless hours of testimony.

Ultimately, by supplanting the arbitrator's reading of the factual record with its own, the Appellate Division strayed far from the deferential standard applicable to arbitration awards. Therefore, NJCJI respectfully submits that the panel's decision should be reversed and the arbitrator's award reinstated.

POINT II

THE LYNCHPIN TO ARBITRATION'S BENEFITS IS FINALITY, WHICH CAN ONLY EXIST WHEN THERE IS LIMITED JUDICIAL REVIEW AND DEFERENCE TO ARBITRATORS

NJCJI respectfully urges this Court to uphold the principles of judicial deference towards arbitration awards and protect arbitration as a tool for swift,

efficient, and fair alternative dispute resolution. Courts have long recognized that a deferential standard of review is necessary to obtain the benefits of arbitration. This is because the benefits of arbitration—efficiency, cost-savings, avoidance of litigation, the selection of a specialized arbitrators, etc.—all depend on finality. Absent finality, arbitration as a tool for alternative dispute resolution quickly loses its luster because, rather than being a substitute for expensive and lengthy civil proceedings, it becomes a springboard for litigation. As a result, upholding the Appellate Division's decision in this case would undermine finality in arbitration and thus undercut its effectiveness as a means for alternative dispute resolution.

"To be sure, arbitration can be an effective means of resolving a dispute in a low cost, expeditious, and efficient manner." Delaney v. Dickey, 244 N.J. 466, 493 (2020). Moreover, "[t]he parties may be afforded the opportunity to choose a skilled and experienced arbitrator in a specialized field to preside over and decide the dispute. And the proceedings may be conducted in a forum out of the public glare." Ibid. Indeed, "'[t]he object of arbitration is the final disposition, in a speedy, inexpensive, expeditious, and perhaps less formal manner, of the controversial differences between the parties.'" Hojnowski v. Vans Skate Park, 187 N.J. 323, 343 (2006) (quoting Carpenter v. Bloomer, 54 N.J. Super. 157, 162 (App. Div. 1959)). "As a result, the court's role is limited following the parties' agreement to proceed in an arbitral forum. Most importantly, the judiciary has no

role in the determination of any substantive issues that the parties have agreed to arbitrate." Curran v. Curran, 453 N.J. Super. 315, 321 (App. Div. 2018). Ultimately, arbitration is "meant to be a substitute for and not a springboard for litigation." Barcon Associates, Inc. v. Tri-County Asphalt Corp., 86 N.J. 179, 187 (1981)(internal quotation marks omitted).

"Courts have long recognized the importance of finality in the context of arbitration." Stone v. Bear, Stearns & Co., 872 F. Supp. 2d 435, 443 (E.D. Pa. 2012) (citing Merit Ins. Co. v. Leatherby Ins. Co., 714 F.2d 673, 683 (7th Cir. 1983) (undermining finality of arbitration would run "contrary to the purpose of the United States Arbitration Act of making arbitration a swift, inexpensive, and effective substitute for judicial dispute resolution"); Fidelity Fed. Bank, FSB v. Durga Ma Corp., 386 F.3d 1306, 1313 (9th Cir. 2004) (recognizing "policy favoring the finality of arbitration awards")). "If a losing party could easily overturn an adverse arbitration award through judicial review, it would make little sense for parties to arbitrate a dispute in the first place." Ibid. Said differently, "[w]ithout the promise of finality, arbitration loses much of its appeal." Id. at 447.

As set forth above, in the instant case the Appellate Division strayed from the appropriate scope of review, delved into the underlying arbitration record, found disagreement with the arbitrator, and supplanted his findings with its own. By failing to accord deference to the arbitrator's findings and ultimate award, the

Appellate Division undercut any sense of finality with respect to the arbitration. "Arbitration retains its appeal as an alternative to litigation only if the parties involved can rely on the arbitrators' decision. In other words, a reasonable person would surely hesitate to arbitrate a dispute in the first place knowing that he or she may very well have to litigate or re-arbitrate the same dispute again." Id. at 454. Here, if the Appellate Division's decision stands, it is likely that individuals will be less inclined to rely on arbitration as a tool for alternative dispute resolution. Rather than seeing arbitration as a just substitute for judicial dispute resolution, parties may instead view it as little more than the first step towards litigation.

In the face of watered-down judicial deference to arbitrators, many individuals may resign themselves to litigation believing it to be the inevitable outcome of any arbitration. Indeed, many of NJCJI's members and affiliates regularly rely on arbitration agreements because the finality of arbitration ensures they are a speedy, fair, inexpensive, and less adversarial process. NJCJI's members and affiliates have structured millions of contractual relationships around the use of arbitration precisely to achieve those benefits. Yet if the Appellate Division's decision is affirmed, the promise of finality that undergirds the benefits of arbitration will be eroded. Predictably, individuals and businesses will eschew arbitration, resulting in additional litigation in our courts and greater strain on the civil justice system.

Therefore, NJCJI respectfully submits that to preserve arbitration as an effective tool for alternative dispute resolution, the Court should reverse the Appellate Division's decision and reaffirm the judicial deference to arbitrators.

CONCLUSION

For the foregoing reasons, NJCJI respectfully submits that the Court should reverse the Appellate Division's order modifying the arbitration award. Here, both New Jersey law and salient federal authorities require that courts accord extreme deference to arbitrators. Indeed, barring the narrowest and most egregious circumstances, so long as an arbitration award can be rationally derived from the parties' arbitration agreement or submissions to the arbitrator, the award should be confirmed. Moreover, the Appellate Division's failure to accord deference to the arbitrator's findings and award erodes arbitration's finality, which is the lynchpin of arbitration's many benefits as a tool for alternative dispute resolution.

Respectfully submitted,

s/Alex R. Daniel
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Counsel for Proposed Amicus Curiae
The New Jersey Civil Justice Institute

Dated: July 8, 2024