No. 23-899

IN THE
Supreme Court of the United States

IFTIKAR AHMED,
Petitioner,
v.
OAK MANAGEMENT CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the Connecticut Supreme Court

REPLY BRIEF FOR PETITIONER

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I. The Decision Below Is Wrong And Empowers Arbitrators To Impose Their Own Brand Of Justice.

As the 4-3 majority below recognized, the arbitrator's use of the fugitive disentitlement doctrine to bar Petitioner from contesting the allegations against him and strike his defenses and counterclaims because he is a fugitive from an unrelated federal case is "perhaps unprecedented." App. 12; see App. 25 (the arbitrator "barred" Petitioner "from contesting the allegations" in Respondent's "[s]tatement of [c]laim," "dismissed" Petitioner's counterclaims, and declared that Petitioner's "affirmative defenses . . . are stricken"). In the words of the dissent, "the arbitrator imposed ***a sanction of his own invention***" and "***unilaterally created an entirely new basis for the imposition of sanctions***." App. 91-92 (emphasis added). "The arbitrator's application of the fugitive disentitlement doctrine resulted in a one-sided presentation by Oak of factual allegations and disputed legal arguments that Ahmed was never given an opportunity to contest." App. 89.

Indeed, "[t]he arbitrator's application of the fugitive disentitlement doctrine not only affected the result, in a very real sense, ***it was the result***." App. 110 (emphasis added). The arbitrator here declared that the "intent" of "[f]ugitive disentitlement" is "to prevent [fugitives] from seeking relief from a judicial system that said fugitive has evaded," and noted that Peti-

tioner was declared a fugitive from an unrelated federal criminal case. App. 24; *see* App. 194. Thus, purporting to enforce the federal judiciary's interest in "prevent[ing]" fugitives "from seeking relief from [the] judicial system"—an interest that *no federal court* has held required entirely disentitling Mr. Ahmed in any proceeding—the arbitrator superintended a one-sided process resulting in a $56 million award, including $17 million for Respondent's attorney's fees.

Neither the court below nor Respondent has identified a single case in the history of American jurisprudence in which ***an arbitrator*** has applied the fugitive disentitlement doctrine, still less to entirely disentitle a party from even contesting the allegations against him. The failure to identify a single such case is not surprising. Federal courts have "inherent authority" stemming from Article III to disentitle fugitives from calling upon the resources of the judiciary (as Respondent concedes, Respondent's Brief in Opposition ("Opp.") at 28), while "the task of an arbitrator is to interpret and enforce a contract, not to make public policy," *Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.*, 559 U.S. 662, 672 (2010).

Given the "perhaps unprecedented" nature of the arbitrator's use of this inherent judicial power, it is thus unsurprising, as Respondent emphasizes, that the lower courts are not split on the issue. The absence of another case addressing this seemingly novel use of an inherent judicial power in arbitration only highlights the extreme departure the lower court has taken from this Court's precedents. If anything, the "highly unusual" circumstances of this case warrant this Court's intervention to reaffirm the precept that

arbitrators have "no general charter to administer justice for a community which transcends the parties" and may not act as "a public tribunal imposed upon the parties by superior authority." *United Steelworkers of America* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574, 581 (1960); App. 12.

Thus, it is of no moment, as Respondent says to wave away other cases in which this Court has reviewed state courts' failure to correctly apply the FAA, that those cases involved either a statute or a court-fashioned doctrine. *See Viking River Cruises, Inc.* v. *Moriana*, 596 U.S. 639 (2022); *Kindred Nursing Ctrs. Ltd.* v. *Clark*, 581 U.S. 246 (2017); *Am. Exp. Co.* v. *Italian Colors Restaurant*, 570 U.S. 228 (2013). Here, the Connecticut Supreme Court approved the arbitrator's impermissible use of a court-fashioned doctrine to, in effect, obviate the parties' bargained-for private resolution of their dispute. Instead of adjudicating Respondent's allegations, the arbitrator simply disentitled Petitioner from defending himself in the arbitration he contracted for because of the arbitrator's "own notions of . . . justice." *Eastern Associated Coal Corp.* v. *United Mine Workers of America, Dist.* 17, 531 U.S. 57, 62 (2000); *see* App. 105 ("the arbitrator decided the case by applying the fugitive disentitlement doctrine"); App. 110 ("[t]he arbitrator's application of the fugitive disentitlement doctrine . . . in a very real sense . . . was the result"). Again, as the dissent explained, the arbitrator imposed "a sanction of his own invention" and "unilaterally created an entirely new

basis for the imposition of sanctions." App. 91-92.[1] This was no "mere act of interpretation" of the parties' agreed arbitral rules. App. 92. The arbitrator's conduct here was precisely the sort of impermissible "public policy" determination this Court has intervened to explain that arbitrators may not make. *Stolt-Nielsen*, 559 U.S. at 673.

In another bid to forestall this Court's review, Respondent argues that the case is really about whether AAA rules empower an arbitrator—at its unreviewable discretion—to simply disentitle a party from defending itself using a power belonging to courts invested with the judicial power of the United States. But, of course, where an arbitrator "simply . . . impose[s] its own view of sound policy," this Court has not hesitated to mandate vacatur under the FAA. *Id.* at 672. As discussed, that is what happened here.

In any event, Respondent is wrong that the AAA rules grant an arbitrator the power to apply the fugitive disentitlement doctrine. Neither Respondent nor the court below cited a single case permitting arbitrators to apply the fugitive disentitlement doctrine, and no specific provision of the AAA rules or the FAA that explicitly grants such a power. *See* App. 99-105. Instead, Respondent attempts to locate unprecedented

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[1] Indeed, the arbitrator even disentitled Petitioner "without allowing Ahmed any opportunity to respond" to Respondent's "motion for application of the fugitive disentitlement doctrine." App. 92. That "was in every sense an ex parte ruling because the arbitrator granted Oak's motion without providing Ahmed an opportunity to respond." App. 106.

powers in standard AAA rules. But arbitrators have no power to impose a disentitlement sanction arising from the inherent judicial power of the United States, and Respondent cannot cite any authority reasoning otherwise. Elephants do not hide in mouseholes, and the standard AAA rules have not been hiding the inherent judicial powers of the United States without any court taking notice. Contrary to Respondent's efforts, standard arbitral rules are "no general charter to administer justice for a community which transcends the parties"—a result barred by this Court. *See Steelworkers*, 363 U.S. at 581.

Even if an arbitrator had any such authority, an arbitrator exceeds his powers under § 10(a)(4), contravenes § 10(a)(3), and violates public policy where he enters a blanket disentitlement in contravention of the limitations set forth in *Degen* and other caselaw, as happened here. Pet. 16-25. In this case, neither the arbitrator nor the Connecticut Supreme Court even purported to apply this Court's limitations on the use of the fugitive disentitlement doctrine. The arbitrator's unrestrained use of an extreme court-fashioned sanction to deprive a party of any right to defend himself violated the FAA.

II. The Questions Presented Are Important.

The decision below disregards the basic procedural guardrails provided for by the FAA and gives *carte blanche* to arbitrators to apply free-floating theories of public policy untethered to parties' agreements.

As in many other recent cases, the Court's review is warranted to correct a state court's erroneous application of the FAA. As the dissent explained, "[i]t is

'[p]recisely because arbitration awards are subject to such judicial deference . . . [that] it is imperative that the integrity of the process, as opposed to the correctness of the individual decision, be zealously safeguarded." App. 96 (citing *Goldfinger* v. *Lisker*, 68 N.Y.2d 225, 231 (1986)). Therefore, the "general reluctance to disturb arbitration awards must yield . . . to the clear necessity of safeguarding the integrity of the arbitration process" when one party is "denied . . . the opportunity to respond." 68 N.Y.2d at 231.

Respondent labels this case a "unicorn" and says the facts "are likely never again to recur." Opp. 25-26. The point, however, is that the decision below injects into arbitral proceedings the very uncertainty and wide latitude that arbitral parties contract to avoid. If—as the dissent explained occurred here—an arbitrator can freely impose "a sanction of his own invention" on the basis of his view of federal or other policy, then all arbitral agreements subject to the decision below are put at greater risk. App. 91-92. In another case, an arbitrator might apply a different court-fashioned doctrine to short-circuit the process for which the parties contracted. In such a future case, the party benefiting from the imposition of a court-fashioned doctrine will gladly cite the decision below. Again, because "the task of an arbitrator is to interpret and enforce a contract, not to make public policy," this Court has repeatedly acted to cut off arbitrators' ability to depart from their precisely defined role by "simply impos[ing] [their] own conception of sound policy." *Stolt-Nielsen*, 559 U.S. at 672-75. It should do so here.

III. This Is An Ideal Vehicle To Decide The Questions Presented.

Finally, Respondent points to purported vehicle problems. But the questions presented are squarely implicated in this case, and there is no impediment to review.

The court below recognized that Mr. Ahmed argued that "arbitrators have no authority to apply the fugitive disentitlement doctrine to abrogate [his] rights" under the parties' agreement, App. 40, and also addressed Mr. Ahmed's claims under the FAA. *See* App. 65 (holding Mr. Ahmed's "claims under the FAA fail for the reasons . . . articulated" regarding the state-law claims, as the state statute is "virtually identical" to the FAA). Under the FAA, parties *must* be given a basic opportunity to be heard. In holding that any such limitation is unreviewable, the court below erred, and this Court should intervene to uphold the basic integrity of arbitral proceedings.

Thus, while Respondent notes that the court below disclaimed the need to "reach the question of whether the federally created doctrine of fugitive disentitlement applies to arbitration proceedings," the court below recognized that Mr. Ahmed had in fact raised that issue. App. 71 n.13; *see id.* at 77 n.24 (recognizing that Mr. Ahmed "assert[ed] that the fugitive disentitlement doctrine could not justify the arbitrator's deprivation of his rights because this doctrine does not apply . . . to arbitration generally, as the purpose of the doctrine is to protect the integrity of judicial proceedings").

A favorable resolution of this case would not be "advisory only," as Respondent argues. Opp. 27. Respondent's argument rises and falls on the flawed theory that Petitioner has to demonstrate specific prejudice to prevail. But if this Court holds that the arbitrator exceeded his powers under § 10(a)(4), no showing of specific prejudice is required for vacatur. *See Stolt-Nielsen*, 559 U.S. at 687. Moreover, as to Petitioner's claim under § 10(a)(3), this Court may also review and address the embedded question whether "deprivations of the type that occurred in the present case are prejudicial *per se*, requiring vacatur as a matter of law." App. 111 (collecting cases). Vacatur is appropriate and would allow due process for Petitioner.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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