

APPENDIX

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**APPENDIX A — AWARD OF ARBITRATOR OF
THE AMERICAN ARBITRATION ASSOCIATION,
COMMERCIAL ARBITRATION TRIBUNAL**

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

Case Number: 01-22-0000-4252

IN THE MATTER OF
THE ARBITRATION BETWEEN:

CREATIVE CORNER EARLY LEARNING
CENTER LLC, VS CREATIVE KORNER
EARLY LEARNING CENTER,

Claimant,

MUNTAHA TAHAR,

Respondent.

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with an arbitration provision contained in a certain Commercial Lease dated as of January 1, 2015 between the parties, and having been duly sworn, and at an in person hearing on the merits lasting four days having duly heard the proofs and allegations of the Claimant, represented by Brian Thompson, Esq. and Zachary L. Chapman, Esq. of the firm of Jackson & Campbell, P.C., and the Respondent, represented by

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Wendell C. Robinson, Esq., hereby FIND and AWARD,
as follows:

1. Respondent is liable to the Claimant, and shall pay to the Claimant within thirty (30) days of the date of this AWARD, the sum of Eight Hundred Thousand Two Hundred Fifty-four Dollars and no cents (\$800,254.00) as and for its damages arising out of its complaint in this matter.
2. Respondent is liable to the Claimant, and shall pay to the Claimant within thirty (30) days of the date of this AWARD, the sum of Five Thousand Three Hundred and Ninety-four Dollars and no cents (\$5,394.00) as and for the expenses it incurred to issue subpoenas to third parties to authenticate documents constituting nearly all of Claimant's exhibits in this Arbitration as to which the Respondent consented to their authenticity and admissibility approximately two weeks before the hearing on the merits.
3. Claimant's claim for attorneys' fees is denied. Interest on amounts awarded herein shall accrue from the date of this Award at the legal rate.
4. Any claims by the RESPONDENT are denied.
5. The administrative fees of the American Arbitration Association totaling \$22,425.00 shall be borne Respondent, and the compensation and expenses of the arbitrator totaling \$22,217.40

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shall be borne equally by the parties. Therefore, Respondent shall reimburse Claimant the sum of \$16,175.00, representing that portion of said fees in excess of the apportioned costs previously incurred and paid by Claimant.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

9-25-23
Date

/s/
Elliott B. Adler, Arbitrator

I, Elliott B. Adler, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

9-25-23
Date

/s/
Elliott B. Adler, Arbitrator

**APPENDIX B — ORDER OF THE SUPERIOR
COURT OF THE DISTRICT OF COLUMBIA, CIVIL
DIVISION, FILED JANUARY 22, 2024**

IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 2020 CA 004995 B
Judge Ross – Cal. 6

CREATIVE CORNER EARLY LEANING CENTER,
LLC T/A CREATIVE KORNER EARLY CENTER,

Plaintiff,

v.

MUNTAHA TAHAR,

Defendant.

**ORDER DENYING DEFENDANT'S
MOTION TO VACATE AND MODIFY
THE ARBITRATION AWARD**

Upon consideration of *Defendant's Motion to Vacate and Modify the Arbitration Award*, the Opposition thereto, and the entire record herein, it is this 22nd day of January 2024, hereby

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ORDERED that the *Defendant's Motion to Vacate and Modify the Arbitration Award* is **DENIED** for the reasons stated in the Opposition.

IT IS SO ORDERED.

/s/

Hon. Maurice A. Ross
Judge, Superior Court of
the District of Columbia

**APPENDIX C — MEMORANDUM OPINION AND
JUDGMENT OF THE DISTRICT OF COLUMBIA
COURT OF APPEALS, FILED JANUARY 21, 2025**

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 24-CV-0091

MUNTAHA TAHAR,

Appellant,

v.

CREATIVE CORNER EARLY LEARNING
CENTER, LLC,

Appellee.

Appeal from the Superior Court
of the District of Columbia
(2020-CA-004995-B)

(Hon. Maurice A. Ross, Trial Judge)

(Submitted January 15, 2025 Decided January 21, 2025)

Before DEAHL and SHANKER, *Associate Judges*, and
STEADMAN, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellee Creative Corner Early Learning Center, LLC, leased property from appellant

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Muntaha Tahar for purposes of operating a daycare center. In December 2020, Creative Corner filed an action in Superior Court alleging that Tahar breached the lease agreement by failing to deliver and maintain the premises in a suitable condition, which caused Creative Corner to delay the opening of the daycare center and close the center for a substantial portion of 2020. Pursuant to a lease provision, Tahar successfully compelled arbitration of the dispute. Following a hearing, the arbitrator found that Tahar was liable to Creative Corner in the amount of \$821,823 plus interest. The Superior Court then granted Creative Corner's motion to confirm the arbitration award, denied Tahar's motion to vacate or modify the arbitration award, and entered judgment in favor of Creative Corner. Tahar now appeals. Seeing no error in the trial court's decisions to confirm the award and deny vacatur or modification of the award, we affirm.

I. Factual and Procedural Background

The parties entered into a lease agreement in January 2015, under which Creative Corner leased from Tahar the premises located at 2478 Alabama Avenue, SE, for a term of five years, to use the premises for a daycare center. The lease agreement contained an arbitration term providing as follows: "Any controversy or claim relating to this contract, including the construction or application of this contract, will be settled by binding arbitration under the rules of the American Arbitration Association, and any judgment granted by the arbitrator(s) may be enforced in any court of proper jurisdiction." In September 2016, the parties amended the lease agreement, adding a provision requiring Tahar to repair defects, deficiencies, or failures

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of materials or workmanship in the building's structure, including mold or water intrusion, and a provision giving Creative Corner the option to renew the lease for another five years at the end of the initial five-year term.

In December 2020, Creative Corner sued Tahar in Superior Court for breach of the lease agreement, alleging, among other things, that (1) Tahar delivered the premises in a condition "wholly unsuitable" for the opening and operating of a daycare center; (2) this delayed Creative Corner's opening for business and resulted in substantial business income loss; (3) Creative Corner incurred expenses making repairs, alterations, and improvements; (4) after opening late, Creative Corner experienced "substantial plumbing, sewage, water intrusion and mold infestation" within the premises which Tahar refused to remediate; (5) this forced Creative Corner to close in January 2020 for 249 days, resulting in a loss of revenue; and (6) Tahar failed to repair the premises and respond to notices regarding the conditions.

The trial court granted Tahar's motion to compel arbitration, concluding that the lease contained a valid and enforceable arbitration provision and that the parties' dispute fell within the scope of that provision. See D.C. Code § 16-4406(b). After a four-day hearing, the arbitrator concluded that Tahar was liable to Creative Corner on Creative Corner's claims, in the amount of \$800,254 plus expenses and interest.

The trial court then granted Creative Corner's motion to confirm the arbitration award, *see id.* § 16-4422; denied

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Tahar's motion to vacate or modify the arbitration award, *see id.* §§ 16-4423, 16-4424; and entered judgment in favor of Creative Corner in the amount of \$821,823 plus interest, costs, and reasonable attorneys' fees, *see id.* § 16-4425.

Tahar timely appealed.

II. Analysis

Tahar argues that the trial court erred in confirming the arbitration award and denying vacatur or modification of the award because (1) Creative Corner's complaint for breach of the lease agreement was filed outside the statutory limitations period, (2) the lease and amendment were unenforceable because Creative Corner had failed to register its trade name as required by D.C. Code § 47-2855.02, and (3) the arbitrator was biased against Tahar. We are unpersuaded on all three fronts and affirm.

A. Legal Standards

"After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to § 16-4420 or 16-4424 or is vacated pursuant to § 16-4423." D.C. Code § 16-4422.

The trial court "shall" vacate an arbitration award if:

- (1) the award was procured by corruption, fraud, or other undue means;

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- (2) the arbitrator was partial or engaged in corruption or prejudicial misconduct;
- (3) the arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to the statutory process;
- (4) the arbitrator exceeded the arbitrator's powers;
- (5) there was no agreement to arbitrate; or
- (6) the arbitration was conducted without proper notice of the initiation of an arbitration.

Id. § 16-4423(a). The trial court "may" vacate an arbitration award "on other reasonable ground." *Id.* § 16-4423(b).

The trial court shall modify or correct an arbitration award if (1) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award; (2) the arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or (3) the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted. *Id.* § 16-4424(a).

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“We review orders confirming or vacating an arbitration award de novo.” *Quinn, Racusin & Gazzola Chartered v. Pavich L. Grp., P.C.*, 309 A.3d 587, 591 (D.C. 2024) (citing *Fairman v. District of Columbia*, 934 A.2d 438, 442 (D.C. 2007)). Our review, however, is “extremely limited, and a party seeking to set [an arbitration award] aside has a heavy burden.” *C.R. Calderon Constr., Inc. v. Grunley Constr. Co., Inc.*, 257 A.3d 1046, 1058 (D.C. 2021) (quoting *Stuart v. Walker*, 143 A.3d 761, 768 (D.C. 2016)).

B. Discussion**1. Statute of Limitations**

Tahar’s first argument appears to be not that the arbitration award itself was erroneous because Creative Corner’s complaint was untimely but rather that the trial court lacked subject-matter jurisdiction because Creative Corner’s complaint was untimely and therefore the court’s order compelling arbitration was “void.” This argument need not detain us long, as Tahar forfeited any statute-of-limitations defense to the complaint.

Tahar concedes that she failed to raise a statute-of-limitations defense when she answered Creative Corner’s complaint and that she herself moved to compel arbitration (where her limitations argument was raised and rejected).¹

1. Consistent with her framing of her argument on appeal—that the trial court lacked jurisdiction to compel arbitration in the first place—Tahar presents no argument about the merits of the arbitrator’s rejection of her statute-of-limitations defense. In any event, the merits of that question would generally not be subject to

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A statute-of-limitations defense is an affirmative defense that a defendant must raise in a responsive pleading. Super. Ct. Civ. R. 8(b), (c). It “may be waived if not promptly pleaded,” *Feldman v. Gogos*, 628 A.2d 103, 104 (D.C. 1993) (quoting *Whitener v. WMATA*, 505 A.2d 457, 458 (D.C. 1986)), and it “erects no jurisdictional bar,” *id.*; *see also Oji Fit World, LLC v. District of Columbia*, 325 A.3d 392, 403 (D.C. 2024).² Tahar’s assertion that a challenge to the trial court’s subject-matter jurisdiction cannot be waived has no bearing here, as a statute-of-limitations defense does not implicate the court’s subject-matter jurisdiction. *See Brin v. S.E.W. Invs.*, 902 A.2d 784, 800 (D.C. 2006).

2. Unenforceability of the Lease and Lease Amendment

Tahar contends that Creative Corner had failed to comply with D.C. Code § 47-2855.02, relating to registration of a trade name, and therefore the lease and

our reconsideration. *See Dolton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 935 A.2d 295, 298 (D.C. 2007) (“[T]his court will not set aside an arbitration award for errors of either law or fact made by the arbitrator.” (quoting *Shore v. Groom L. Grp.*, 877 A.2d 86, 91 (D.C. 2005))).

2. As we noted in *Oji Fit*, it is more accurate to say that a defense that a party failed to raise, as opposed to a defense that a party intentionally relinquished or abandoned, is “forfeited” rather than “waived.” 325 A.3d at 403 n.5. And although review of Tahar’s statute-of-limitations argument is not entirely foreclosed, *see Plus Props. Tr. v. Molinuevo Then*, 324 A.3d 896, 903 (D.C. 2024), we see no exceptional circumstances or miscarriage of justice warranting review of it, *see id.*

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lease amendment were unenforceable. Tahar presented this argument in the arbitration proceedings and the arbitrator rejected it. Again, “judicial review of arbitration awards is limited,” *Dolton*, 935 A.2d at 298 (alteration and internal quotation marks omitted), and we will not set aside an arbitration award for errors of either law or fact made by the arbitrator, *id.*; *see also C.R. Calderon Constr., Inc.*, 257 A.3d at 1058-59. Even to the extent Tahar’s argument could be construed as positing that there was no valid lease and thus no agreement to arbitrate, *see* D.C. Code § 16-4423(a)(5), Tahar presents no developed argument that a violation of § 47-2855.02 nullifies a contract. *See* 17 D.C.M.R. § 8906.2 (“A person’s failure to properly register a trade name shall not impair the validity of a contract or act of such person . . .”).³

3. Arbitrator’s Bias

D.C. Code § 16-4423(a)(2)(A) requires vacatur of an arbitration award if there was [e]vident partiality by an arbitrator appointed as a neutral arbitrator.” By her own description, Tahar’s argument is that the arbitrator was “biased, against her, because of his orders, favoring the

3. In *HVAC Specialist, Inc. v. Dominion Mech. Contractors, Inc.*, 201 A.3d 1205 (D.C. 2019) (cited by Tahar), a subcontractor “lacked the relevant license to do business in the District of Columbia as a refrigeration and air conditioning contractor,” *id.* at 1207-08, and therefore could not validly enter into a contract to do refrigeration and air conditioning work, *id.* at 1210. Tahar does not assert that Creative Corner lacked a license to do business as a daycare center, and in any event the contract at issue here was not one to engage in daycare work but one to lease property.

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Appellee, when the rules and case law, are to contrary of his rulings.” But “[t]he courts have repeatedly rejected claims by parties dissatisfied with the results of arbitration proceedings that certain rulings can only be explained by the arbitrators’ evident partiality.” *Celtech, Inc. v. Broumand*, 584 A.2d 1257, 1259 (D.C. 1991). “To permit ‘evident partiality’ to be inferred from the arbitrator’s decision on the merits would undercut the restrictions on judicial review of arbitration proceedings for error of fact or law.” *Id.* Tahar points to no “specific facts which indicate improper motives on the part of the arbitrator,” *id.* (internal quotation marks omitted), such as “close financial relations for many years” or a familial relationship with a party to the arbitration, *id.* “[H]aving made no attempt to show the existence of circumstances of this kind,” Tahar’s “claim of evident partiality must fail.” *Id.*

III. Conclusion

For the foregoing reasons, we affirm the judgment of the trial court.

So ordered.

ENTERED BY DIRECTION OF THE COURT:

/s/ _____
JULIO A. CASTILLO
Clerk of the Court

**APPENDIX D — ORDER OF THE DISTRICT
OF COLUMBIA COURT OF APPEALS, FILED
FEBRUARY 6, 2025**

**DISTRICT OF COLUMBIA
COURT OF APPEALS**

No. 24-CV-0091
2020-CA-004995-B

MUNTAHA TAHAR,

Appellant,

v.

CREATIVE CORNER EARLY LEARNING
CENTER, LLC,

Appellee.

Filed February 6, 2025

BEFORE: Deahl and Shanker, Associate Judges, and
Steadman, Senior Judge.

ORDER

On consideration of appellant's petition for rehearing,
it is

ORDERED that appellant's petition for rehearing is
denied.

PER CURIAM