APPENDIX

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of January, two thousand twenty-six.

Present:

DEBRA ANN LIVINGSTON,
Chief Judge,

WILLIAM J. NARDINI,
ALISON J. NATHAN,
Circuit Judges.

25-77

MARK BARRON, MSV SYNERGY, LLC,

Plaintiffs-Appellees,

v.

SAADIA SHAPIRO, SHAPIRO & ASSOCIATES ATTORNEYS AT LAW, PLLC, PAZ GLOBAL VENTURES, LLC,

Defendants-Appellants,

HARLEM SUNSHINE, LLC, HARLEM RESIDENTIAL, LLC, EAST 125TH DEVELOPMENT, LLC, VADIM LEYBEL, CAST CAPITAL LENDING CORP., PETER ZVEDENIUK, ARI FRIEDMAN, BORIS LEYBEL,

Defendants.

For Plaintiffs-Appellees:

Kevin Fritz, Meister Seelig & Fein, PLLC., New York, NY.

For Defendants-Appellants Shapiro and Associates Attorneys at Law, PLLC, and PAZ Global Ventures LLC:

Marla Shapiro, Shapiro & Associates Attorneys at Law, PLLC, New York, NY.

For Defendant-Appellant
Saadia Shapiro:

Saadia Shapiro, *pro se*, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Ramos, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Defendants-Appellants Saadia Shapiro ("Shapiro"), Shapiro & Associates Attorneys at Law, PLLC ("Shapiro & Associates"), and PAZ Global Ventures LLC ("Paz") (collectively "Defendants") appeal from a December 11, 2024 judgment of the United States District Court for the Southern District of New York, confirming an arbitral award of $2,784,606.61 in favor of Plaintiffs-Appellees Mark Barron ("Barron") and MSV Synergy, LLC ("MSV") (collectively "Plaintiffs"). The dispute between the parties arose in relation to three agreements executed in 2020: (1) the Sales and Purchase Agreement ("SPA") in which MSV agreed to purchase 250,000 boxes "of powder free nitrile medical examination gloves" from Paz, App'x 29, (2) the Escrow Agreement between MSV and Shapiro & Associates, and

(3) the Guarantee Agreement, executed roughly forty five days after the first two agreements, between Shapiro and Barron.

Plaintiffs first filed suit in federal court in September of 2021. Plaintiffs' Amended Complaint, filed on January 26, 2022, raised claims against Defendant for, *inter alia*, breach of contract and fraud. The district court granted Defendants' motion to compel arbitration of all claims on September 7, 2022, and on June 3, 2024, the arbitrator found Paz and Shapiro jointly and severally liable and awarded Plaintiffs damages with prejudgment interest, administrative fees, and attorney's fees. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal, to which we refer only as necessary to explain our decision to AFFIRM.

* * *

"This Court reviews a district court's decision to confirm or vacate an arbitration award *de novo* for questions of law. We review findings of fact for clear error." *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr.*, 729 F.3d 99, 103 (2d Cir. 2013) (citation omitted). "We review *de novo* the district court's application of the manifest disregard standard to an arbitration award." *Seneca Nation of Indians v. New York*, 988 F.3d 618, 625 (2d Cir. 2021) (typeface altered). In determining whether to confirm or vacate an arbitration award, "courts must grant an arbitration panel's decision great deference." *Duferco Int'l Steel Trading v. T.*

Klaveness Shipping A/S, 333 F.3d 383, 388 (2d Cir. 2003). Litigants "petitioning a federal court to vacate an arbitral award bear[] the heavy burden of showing that the award falls within a very narrow set of circumstances delineated by statute and case law." *Id.* On appeal, Defendants argue that the district court erred in rejecting their arguments that the arbitrator exceeded her powers, denied them due process, and acted in manifest disregard of the law. We disagree.

I. The Arbitrator's Authority

The Federal Arbitration Act ("FAA") provides that a court may vacate an award "where the arbitrators exceeded their powers." 9 U.S.C. § 10(a)(4). "Because the FAA establishes a strong presumption in favor of enforcing an arbitration award, and an award is presumed valid unless proved otherwise, the court's inquiry under Section 10(a)(4) 'focuses on whether the arbitrators had the power, based on the parties' submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrators correctly decided that issue.'" *Smarter Tools Inc. v. Chongqing SENCI Imp. & Exp. Trade Co.*, 57 F.4th 372, 382 (2d Cir. 2023) (quoting *Westerbeke Corp. v. Daihatsu Motor Co.*, 304 F.3d 200, 220 (2d Cir. 2002)).

Defendants argue that the arbitrator lacked the power to adjudicate claims against Shapiro because he was not a party to the SPA, which contained the arbitration provision. We agree with the district court's application of judicial estoppel in declining

to "depart from its prior holding that all claims related to the SPA, escrow, and guarantee agreements are within the scope of the SPA's arbitration." *MSV Synergy, LLC v. Shapiro*, No. 21 CIV. 7578 (ER), 2024 WL 4931868, at *8 (S.D.N.Y. Dec. 2, 2024). "Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (quoting *Davis v. Wakelee*, 156 U.S. 680, 689 (1895)) (alteration accepted).

In their 2022 memorandum of law in support of the motion to compel arbitration, a filing signed by Shapiro in his personal capacity, Defendants stated that "the arbitration provision in the SPA is applicable to the Escrow Agreement and thus the Plaintiff must arbitrate any dispute related to the SPA and the Escrow Agreement." Supp. App'x 97. Defendants further argued that because "the SPA, the Escrow Agreement and the Guarantee were part of a global transaction . . . it is foreseeable that the [sic] *Mr. Shapiro* would invoke the arbitration clause." Supp. App'x 98 (emphasis added). Defendants' contention that these statements referred only to the claims ultimately included in Plaintiffs' arbitration demand, a document that did not exist at the time, defies credulity. The memorandum stated that "the Plaintiff has expressly agreed to arbitrate the claims they now impermissibly assert *in the Complaint*," Supp. App'x 97

(emphasis added), and the amended complaint included an array of claims against Shapiro in his personal capacity, including a claim for fraud. In another filing with the district court, Defendants stated "Plaintiffs' claims *including fraud* . . . should be presented to arbitration." Supp. App'x 121 (emphasis added). The district court correctly held that Defendants' position following the issuance of the award was "clearly inconsistent," *New Hampshire*, 532 U.S. at 750, with these prior representations.

Nor do we discern any merit in Defendants' argument that Plaintiffs' arbitration demand otherwise limited the arbitrator's authority to adjudicate a fraud claim against Shapiro. The arbitration provision in the SPA stated that "any dispute . . . shall be resolved by arbitration according to the rules of the American Arbitration Association." App'x 33. Rule 49(a) of the American Arbitration Association Commercial Arbitration Rules and Mediation Procedures provides that the arbitrator "may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties." And, as discussed above, Defendants are judicially estopped from abandoning their prior position that all claims stated in Plaintiffs' complaint were subject to arbitration pursuant to the various agreements.

II. Fundamental Fairness of the Proceedings

A court may also vacate an award "where the arbitrators were guilty of misconduct in refusing to

postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced." 9 U.S.C. § 10(a)(3). Under section 10(a)(3) of the FAA, "[o]ur review is restricted to determining whether the procedure was fundamentally unfair." *Tempo Shain Corp. v. Bertek, Inc.*, 120 F.3d 16, 20 (2d Cir. 1997) (citation omitted).

Defendants argue that the arbitration was fundamentally unfair because the arbitrator ruled that Shapiro was personally liable to Plaintiffs as a participant in the fraud without providing an opportunity to respond. Even assuming *arguendo* that the amended complaint and the evidence presented during the arbitration did not sufficiently place Defendants on notice of the need to address this issue, Defendants have not established that the procedure was fundamentally unfair. Plaintiffs represented to the district court that "Defendants did not seek to submit further evidence concerning Plaintiffs' claim to hold Shapiro personally liable under the SPA, the Escrow Agreement, and/or the Guarantee Agreement." Supp. App'x 151 (Decl. ¶ 21). On appeal, Defendants do not contest this representation or otherwise assert that—prior to the issuance of the award—they sought an opportunity to respond to Plaintiffs' Supplemental Post-Hearing Brief. In light of their failure to do so, they cannot now argue they did not receive "an adequate opportunity to present [their] evidence and argument." *Tempo Shain*, 120 F.3d at 20.

We agree also with the district court's rejection of "Defendants' claims that the Arbitrator ignored, misunderstood, or improperly declined to take judicial notice of certain evidence." *MSV*, 2024 WL 4931868, at *9. As an initial matter, Defendants' disagreement with the arbitrator's interpretation of the evidence does not establish that "the procedure was fundamentally unfair." *Tempo Shain*, 120 F.3d at 20 (quotation marks omitted). And, with respect to Defendants' arguments regarding various newspaper articles, the arbitrator's rejection of that evidence as untimely fell squarely within her "substantial discretion to admit or exclude evidence" and did not, in any case, implicate fundamental fairness. *LJL 33rd St. Assocs., LLC v. Pitcairn Props. Inc.*, 725 F.3d 184, 195 (2d Cir. 2013); *see also Kolel*, 729 F.3d at 107 ("The Panel's decision to hear only one witness does not make the arbitration fundamentally unfair.").

III. Manifest Disregard of the Law

"We have held that 'as judicial gloss on the specific grounds for vacatur of arbitration awards' in the FAA, an arbitrator's 'manifest disregard' of the law or of the terms of the arbitration agreement 'remains a valid ground for vacating arbitration awards.'" *Seneca Nation*, 988 F.3d at 625 (quoting *Schwartz v. Merrill Lynch & Co.*, 665 F.3d 444, 451–52 (2d Cir. 2011)) (alteration accepted). Demonstrating that an arbitrator ruled in "manifest disregard" of the law requires showing "something beyond and different from a mere error in the

law or failure on the part of the arbitrators to understand or apply the law." *Westerbeke*, 304 F.3d at 208 (quoting *Saxis S.S. Co. v. Multifacs Int'l Traders, Inc.*, 375 F.2d 577, 582 (2d Cir. 1967)). "Rather, 'the award should be enforced, despite a court's disagreement with it on the merits, if there is a *barely colorable justification* for the outcome reached.'" *T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc.*, 592 F.3d 329, 339 (2d Cir. 2010).

Accordingly, "[t]o succeed in challenging an award under the manifest disregard standard, a party must make 'a showing that the arbitrators knew of the relevant legal principle, appreciated that this principle controlled the outcome of the disputed issue, and nonetheless willfully flouted the governing law by refusing to apply it.'" *Seneca Nation*, 988 F.3d at 626 (quoting *Schwartz*, 665 F.3d at 452). "In addition to this 'subjective component,' a finding of manifest disregard requires an objective determination that the disregarded legal principle was 'well defined, explicit, and clearly applicable.'" *Id.* (quoting *Westerbeke*, 304 F.3d at 209).

We reject Defendants' arguments that the arbitrator manifestly disregarded the law through her ruling on fraud and her interpretation of the contract. As discussed above, Defendants declined to make additional legal arguments regarding fraud. Because they did not present their legal arguments on fraud to the arbitrator prior to the issuance of the award, they cannot establish the subjective component of manifest disregard. In any case, we agree with the district court that "[i]n evaluating

Shapiro's conduct, the Arbitrator carefully considered Shapiro's obligations under the SPA, escrow, and guarantee agreements, the defenses Shapiro proffered at the evidentiary hearing, and the testimony provided by rebuttal witness Germain." *MSV*, 2024 WL 4931868, at *10. At the very least, the arbitrator's analysis "offers a barely colorable justification for the outcome reached." *Jock v. Sterling Jewelers Inc.*, 646 F.3d 113, 122 (2d Cir. 2011) (quotation marks omitted).

With respect to interpretation of the contracts, we agree also with the district court that "the Arbitrator meaningfully engaged with the relevant contract provisions and carefully considered their applicability." *MSV*, 2024 WL 4931868, at * 11. Defendants thus have likewise failed to meet their burden to establish the arbitrator lacked "a barely colorable justification for [her] interpretation of the contract." *Westerbeke*, 304 F.3d at 222.

* * *

We have considered Defendants' remaining arguments and find them to be without merit.[1] Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

[SEAL]

/s/ CATHERINE O'HAGAN WOLFE

[1] In addition, we deny Defendants' motion to file a supplemental appendix as moot.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of March, two thousand twenty-six.

Docket No: 25-77

Mark Barron, MSV Synergy, LLC,

Plaintiffs-Appellees,

v.

Saadia Shapiro, Shapiro & Associates Attorneys at Law, PLLC, PAZ Global Ventures, LLC,

Defendants-Appellants,

Harlem Sunshine, LLC, Harlem Residential, LLC, East 125th Development, LLC, Vadim Leybel, Cast Capital Lending Corp., Peter Zvedeniuk, Ari Friedman, Boris Leybel,

Defendants.

ORDER

Appellants filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

[SEAL]

/s/ CATHERINE O'HAGAN WOLFE

MANDATE

MANDATE ISSUED ON APRIL 01, 2026

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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Defendants.

For Plaintiffs-Appellees:

Kevin Fritz, Meister Seelig & Fein, PLLC., New York, NY.

For Defendants-Appellants
Shapiro and Associates
Attorneys at Law, PLLC,
and PAZ Global Ventures LLC:

Marla Shapiro, Shapiro & Associates Attorneys at Law, PLLC, New York, NY.

For Defendant-Appellant
Saadia Shapiro:

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* * *

"This Court reviews a district court's decision to confirm or vacate an arbitration award *de novo* for questions of law. We review findings of fact for clear error." *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr.*, 729 F.3d 99, 103 (2d Cir. 2013) (citation omitted). "We review *de novo* the district court's application of the manifest disregard standard to an arbitration award." *Seneca Nation of Indians v. New York*, 988 F.3d 618, 625

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Nor do we discern any merit in Defendants' argument that Plaintiffs' arbitration demand otherwise limited the arbitrator's authority to adjudicate a fraud claim against Shapiro. The arbitration provision in the SPA stated that "any dispute . . . shall be resolved by arbitration according to the rules of the American Arbitration Association." App'x 33. Rule 49(a) of the American Arbitration Association Commercial Arbitration Rules and Mediation Procedures provides that the arbitrator "may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties." And, as discussed above, Defendants are judicially estopped from abandoning their prior position that all claims stated in Plaintiffs' complaint were subject to arbitration pursuant to the various agreements.

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cannot now argue they did not receive "an adequate opportunity to present [their] evidence and argument." *Tempo Shain*, 120 F.3d at 20.

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Demonstrating that an arbitrator ruled in "manifest disregard" of the law requires showing "something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand or apply the law." *Westerbeke*, 304 F.3d at 208 (quoting *Saxis S.S. Co. v. Multifacs Int'l Traders, Inc.*, 375 F.2d 577, 582 (2d Cir. 1967)). "Rather, 'the award should be enforced, despite a court's disagreement with it on the merits, if there is a *barely colorable justification* for the outcome reached.'" *T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc.*, 592 F.3d 329, 339 (2d Cir. 2010).

Accordingly, "[t]o succeed in challenging an award under the manifest disregard standard, a party must make 'a showing that the arbitrators knew of the relevant legal principle, appreciated that this principle controlled the outcome of the disputed issue, and nonetheless willfully flouted the governing law by refusing to apply it.'" *Seneca Nation*, 988 F.3d at 626 (quoting *Schwartz*, 665 F.3d at 452). "In addition to this 'subjective component,' a finding of manifest disregard requires an objective determination that the disregarded legal principle was 'well defined, explicit, and clearly applicable.'" *Id.* (quoting *Westerbeke*, 304 F.3d at 209).

We reject Defendants' arguments that the arbitrator manifestly disregarded the law through her ruling on fraud and her interpretation of the contract. As discussed above, Defendants declined to make additional legal arguments regarding fraud. Because they did not present their legal arguments on fraud to the arbitrator prior to the issuance of

the award, they cannot establish the subjective component of manifest disregard. In any case, we agree with the district court that "[i]n evaluating Shapiro's conduct, the Arbitrator carefully considered Shapiro's obligations under the SPA, escrow, and guarantee agreements, the defenses Shapiro proffered at the evidentiary hearing, and the testimony provided by rebuttal witness Germain." *MSV*, 2024 WL 4931868, at *10. At the very least, the arbitrator's analysis "offers a barely colorable justification for the outcome reached." *Jock v. Sterling Jewelers Inc.*, 646 F.3d 113, 122 (2d Cir. 2011) (quotation marks omitted).

With respect to interpretation of the contracts, we agree also with the district court that "the Arbitrator meaningfully engaged with the relevant contract provisions and carefully considered their applicability." *MSV*, 2024 WL 4931868, at * 11. Defendants thus have likewise failed to meet their burden to establish the arbitrator lacked "a barely colorable justification for [her] interpretation of the contract." *Westerbeke*, 304 F.3d at 222.

* * *

We have considered Defendants' remaining arguments and find them to be without merit.[1] Accordingly, we AFFIRM the judgment of the district court.

[1] In addition, we deny Defendants' motion to file a supplemental appendix as moot.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

[SEAL]

/s/ CATHERINE O'HAGAN WOLFE

A TRUE COPY:

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals,
Second Circuit

[SEAL]

/s/ CATHERINE O'HAGAN WOLFE

THE ARBITRATOR IGNORED FOUR SEPARATE FORCE MAJURE CLAUSES AND THE DISTRICT COURT ERRED IN NOT RECOGNIZING THIS (three in the SPA (**A27**) and one in the escrow and paymaster agreement (**A36**));

A28 - Par 1(viii) Titled Force de Majure; ***"Force de Majeure" refers to acts of God, such as accidents, strikes, pandemics*****.....,,,,** which ***unduly delay the Parties from processing their accountabilities and responsibilities towards the transaction, where such delays or preventions are beyond the control of the relevant Party" (Emphasis added)***

A30 - Par 2(iii) Under "Scope of Agreement"; "This SPA.....may only be altered (if)....***"the change is required by law or force de majeure circumstances."*****:**

(Note; paragraph 4(ii) regarding the 25-mile radius would be subject to this paragraph labeled as "Scope of Agreement")

A32 - Par 10 Titled "Force Majeure"; ***"The seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control .....If the delay persists for a period of seven business days beyond the stipulated period then the agreement, unless mutually extended all the parties, will terminate automatically with no obligations or liabilities on either party." (Emphasis added).***

This particular force majeure clause also begs the argument that the SPA became invalid after seven days of delay. In that case, there can be no claim that Paz breached the SPA or that Shapiro is liable for a Paz' breach of the SPA? This also further begs the question whether the arbitrator even read the agreements that were the subject of the arbitration?

A44 - Par 26 Titled "Force Majeure"

"The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligations .....arising out of ... circumstances beyond its reasonable control, including, without limitation, ... epidemic; riots; interruptions (emphasis added).

[Page 12]

1. Escrow Agent shall immediately disburse funds, held in full, to Seller's nominated bank account within the same Business Day after receiving an email copy of a bill of lading and an SGS Report confirming that the quantity and specifications of the Products was conducted successfully and which is issued from the country of origin of the manufacturer of the goods and within 24 hours of the completion of production. Receipt of the SGS report by the escrow agent shall make the transaction specified in the purchase and sales agreement unconditional and binding and does not require any further consent or approval by Buyer. Funds for each shipment shall be released separately from escrow as each shipment arrives in the United States and after buyers inspection and approval. However prior to any distribution from the escrow account, Mr Mark Barron shall issue authorization for the distribution via email from the email address mcbarron2600@gmail.com to the email address *sshapiro@shapirolawyers.net.*

2. Any and all agreements between Buyer, Seller, and any other party or parties involved in the transaction do not impose any obligation of any kind upon the Escrow Agent to monitor the respective obligations of Buyer to any other parties or the obligations of other parties to Buyer. The Escrow Agent shall have no obligation to assure or participate in the enforcement or performance of the Purchase Agreement, whether or not the Escrow Agent

shall have knowledge or notice of the terms thereof, or any acts or omissions relating thereto.

3. Escrow Agent is not a party to and is not bound by or charged with notice of any agreement out of which this escrow may arise, other than this escrow Agreement between Buyer and Escrow Agent.

4. In the event the Product does not pass inspection as required in paragraph 1 above, Escrow Agent shall return to Buyer all funds within the same Business Day of receiving such written notification of non-compliance from Buyer.

5. Escrow Agent hereby agrees to hold the deposits hereunder in escrow subject to the provisions of this Agreement. Escrow Agent shall act with respect to such funds as a stakeholder only, and shall not be liable for the payment of interest, legal fees (including but not limited to his own), court costs or expenses in any action that may be brought to recover the funds held in escrow, unless the Escrow Agent shall fail or refuse to pay over any such funds pursuant to a judgement, order, or decree of a court of competent jurisdiction that shall be final beyond possibility of appeal. In the event of a threatened dispute, the Escrow Agent may be relieved of responsibility for the disputed amount by depositing the funds so held with a court of competent jurisdiction.

6. If a dispute arises as to the funds held in escrow, the parties covenant and agree that Escrow Agent will not be named as a defendant in any

action whatsoever pertaining to this Agreement. If Buyer makes claims against Escrow Agent, Escrow Agent shall retain outside counsel, and be entitled to attorneys' fees from Buyer.

7. Escrow Agent shall not be bound by any modification of this Agreement unless the same is in writing and signed by Buyer and Escrow Agent and, if Escrow Agent's duties hereunder are affected, unless Escrow Agent shall have given, in writing, its prior written consent thereto.

* * *

[Page 15]such successor escrow agent shall be the Escrow Agent hereunder.

(h) It is not the intention of the parties hereto to create, nor shall this Escrow Agreement be construed as creating, a partnership or association, or to render the parties hereto liable as partners.

(i) Notwithstanding any provision herein to the contrary, in the event (i) of any disagreement or controversy arising under this Escrow Agreement, (ii) conflicting demands or notices are made upon the Escrow Agent arising out of or relating to this Escrow Agreement, or (iii) the Escrow Agent in good faith is in doubt as to what action it should take hereunder, the Escrow Agent shall have the right, at its election, to withhold and stop all further proceedings in, and performance of, this Escrow Agreement and all instructions received hereunder and file a suit in interpleader and obtain an order from a court of competent jurisdiction requiring all parties involved to interplead and lit-

igate in such court their claims and rights among themselves and with the Escrow Agent. Should any suit or legal proceeding be instituted arising out of or related to this Escrow Agreement, whether such suit be initiated by the Escrow Agent or others, the Escrow Agent shall have the right, at its option, to stop all further proceedings under and performance of this Escrow Agreement and of all instructions received hereunder until all differences shall have been rectified and all doubts resolved by agreement or until the rights of all parties shall have been fully adjudicated.

(j) The Escrow Agent shall have the right to perform any of its duties hereunder through agents, attorneys, custodians or nominees.

(k) The Escrow Agent shall have the right, but not the obligation, to consult with counsel of its choice and shall not be liable for any action taken or omitted to be taken by the Escrow Agent either in accordance with the advice of such counsel or in accordance with any opinion of counsel addressed and delivered to the Escrow Agent.

(l) The parties hereto shall provide to the Escrow Agent such information as the Escrow Agent may reasonably require to permit the Escrow Agent to comply with its obligations under the federal USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001). The Escrow Agent shall not credit any amount of interest or investment proceeds earned on the Escrow

Fund, or make any payment of all or a portion of the Escrow Fund, to any person unless and until such person has provided to the Escrow Agent such documents as the Escrow Agent may reasonably require to permit the Escrow Agent to comply with its obligations under the federal USA PATRIOT Act.

(m) Saadia Shapiro, as a principal of Shapiro and Associates PLLC and as a principal of Seller has a pre-existing business relationship with Buyer. The Rules of Professional Conduct provide that when there is a potential conflict, the attorneys must make certain disclosures and obtain the Parties' consent to waive any such potential conflicts. It is agreed that, notwithstanding the business relationship, Shapiro and Associates PLLC will act as Escrow Agent pursuant to this agreement. This disclosure is provided in an abundance of caution, not only to comply with Shapiro & Associates and Saadia Shapiro's obligations under the Rules of Professional Conduct, but also to avoid any potential misunderstanding with respect to Shapiro and Associates PLLC serving as Escrow Agent at the same time that it conducts business with Buyer. Buyer understands that escrow agent's sole role is to hold funds for the purpose of purchasing personal protection equipment on behalf of buyer and that in that capacity there is no conflict of interest. As a further abundance of caution the parties have designated that no monies are to be released for any purpose from escrow without the written consent

and approval of Buyer MSV Synergy / Mark Barron. Should any

* * *

[Page 19]

21. *Recitals; Not an Amendment.* The Recitals set forth above are hereby incorporated herein by reference. This Escrow Agreement is not intended to amend or supersede any provision of the Purchase Agreement.

22. *Counterparts.* This Escrow Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other.

23. *Delivery.* This Escrow Agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including transmission in portable document format by electronic mail), shall be treated in all manner and respects and for all purposes as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto shall re-execute original forms hereof and deliver them to all other parties hereto. No party hereto shall raise the use of a facsimile machine or other electronic transmission to deliver a signature, or the fact that any signature

was transmitted or communicated through the use of a facsimile machine or other electronic transmission, as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

24. *Termination.* This Escrow Agreement shall terminate upon final disbursement of funds in the Escrow Account in accordance with the terms hereof, however the parties may agree in writing to continue this escrow agreement under the same terms and conditions.

25. *Assignment of Interests.* No assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written notice of such assignment shall be filed with and acknowledged by the Escrow Agent.

26. *Force Majeure.* The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligations under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking

industry to resume performance as soon as reasonably practicable under the circumstance.

27. *Third Party Beneficiaries.* This Escrow Agreement is for the sole benefit of the parties hereto and their respective successors and assigns and nothing in this Escrow Agreement, express or implied, is intended to or shall confer upon any other Person, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Escrow Agreement, and no

* * *

EXHIBIT 32

BARRON MONEY TRAIL SUPPORTED BY DOCUMENTATION

10/30/20	Barron wires into the escrow account $2 million (Ex. 32a; A518)
12/14/20	The money is released by Plaintiff to purchase the gloves as per the guaranty
12/17/20	confirmation of wire to Glover for $992,000 with Baron's name on it (Ex. 32d; A519 - A521, Dkt 31.2)
12/30/20	wire confirmation of $793,000 from Glover to Shenyan (Ex. 32e; A524-A526)
12/31/20	wire confirmation of $788,544 from Glover to Shenyan (Ex. 32f; A525-A526; Dkt 31.2 Page 17)
1/12/21	wire confirmation of $211,736 from Glover to Shenyan (Ex. 32g; A527; Dkt 31.2 Page 19)
1/12/21	wire confirmation $149,440 from Glover to Shenyan (Ex 32h; A528, Dkt 31.2, P 20)
1/13/21	additional wire of $149,440 from Glover to Shenyan (Ex. 32i; Dkt 31.2 P 22)
1/13/21	confirmation of wire to Glover Court for $983,000 with Barron's name on it (Ex. 32j; A522-A523; Dkt 31.2, Page 14)

1/14/21	third wire of $149,440 from Glover to Shenyan (Ex. 32k; A531; Dkt 31.2, Page 23)
1/21/21	wire confirmation of $785,000 from Glover court to HN (Ex. 32L; A532-A533; Dkt 31.2 Page 24)

EXHIBIT 17

RECORDED BY PLAINTIFF AND SUBMITTED WITH CLAIMANT'S DISCOVERY AS MSV 000563

Recording of phone conversation with Peter Zvedeniuk, Saadia Shapiro, Sandy Sandiford, and Victoria Boyle-Hebron

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Transcript of Recording
MSV000563 – New Recording 189 4 –
Peter, Sandy, VBH, SS

(All attendees appeared remotely via videoconferencing and/or teleconferencing.)

Speakers:

Sandy
Saadia
Victoria
Penny

* * *

[Page 27]**Certificate of Authenticity**

TO WHOM IT MAY CONCERN

This is to certify that the speech in this audio file has been converted into text manually by our transcribers on Scribie.com to the best of their ability

and we can attest that there is no more than one mistake per hundred spoken words.

Signed

JUDITH MOGAMOG [STAMP ILLEGIBLE]

Judith Mogamog

Operations Manager

CGBiz Corporation DBA Scribie

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

21 Civ. 7578 (ER)

MSV SYNERGY, LLC and MARK BARRON,

Plaintiffs,

v.

SAADIA SHAPIRO, SHAPIRO & ASSOCIATES ATTORNEYS AT LAW, PLLC, and PAZ GLOBAL VENTURES, LLC,

Defendants.

OPINION AND ORDER

Ramos, D.J.:

MSV Synergy LLC ("MSV") and Mark Barron brought this action on September 10, 2021 against Saadia Shapiro, his law firm Shapiro & Associates, PAZ Global Ventures, LLC ("PAZ"), and other parties,[1] raising various claims regarding an alleged fraudulent scheme whereby Defendants induced Barron to pay $2 million in exchange for personal

[1] The action was initially brought against ten defendants, and an eleventh defendant was added in the amended complaint. Docs. 1, 44. Plaintiffs filed notices of voluntary dismissal as to all defendants except Shapiro, Shapiro & Associates, and PAZ, which the Court approved on November 13, 2022 and January 12, 2023. Docs. 106, 114.

protective equipment ("PPE") that was never received. Doc. 1. On September 7, 2022, the Court granted the motion to compel arbitration brought by Shapiro, Shapiro & Associates, and PAZ, and stayed this case while the parties proceeded to arbitration. Doc. 89. On May 13, 2024, the Arbitrator issued an award (the "Award") in favor of MSV and Barron.[2] Doc. 133-12. Now pending before the Court are Plaintiffs' motion to lift the stay and confirm the Award, and Defendants Shapiro[3] and PAZ's cross-motion to vacate the Award. Docs. 132, 144. For the reasons set forth below, the Award is CONFIRMED, and Defendants' motion to vacate the Award is DENIED.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Court assumes familiarity with the facts set forth in its September 7, 2022 opinion and order granting the motion to compel arbitration. Doc. 89.

A. The Parties and Their Transactions

MSV is a limited liability company that imports and sells PPE. Doc. 44 ¶¶ 6, 19. Barron, a professional football player, has a 50% membership interest in MSV and serves as the primary financier of the company. *Id.* ¶¶ 7, 20. Saadia Shapiro, an attor-

[2] There is no indication in the record as to what disposition, in any, was reached as to defendant Shapiro & Associates.

[3] While Shapiro and PAZ submit a joint motion to vacate, Shapiro, a licensed attorney, appears *pro se*. Doc. 144 at 4.

ney licensed in New York, is a managing partner at Shapiro & Associates. *Id.* ¶¶ 8–9. Shapiro also operates a side business of manufacturing PPE and shipping it internationally. *Id.* ¶ 21. PAZ is a limited liability company with its principal place of business in New York. *Id.* ¶ 10. Shapiro is the sole member of PAZ. *Id.*; Doc. 146 at 2.

On October 30, 2020, MSV signed a Sale and Purchase Agreement (the "SPA") drafted by PAZ wherein MSV agreed to buy 250,000 boxes, each containing 100 medical gloves, from PAZ, to be delivered to a site within 25 miles of the New York/New Jersey Metropolitan area. *Id.* ¶¶ 61, 69, 116; Doc. 133-1 § 2(i). PAZ was required to finance the export and import operations. Doc. 44 ¶ 68. The SPA required any amendments to be made in writing and signed by both parties. Doc. 133-1 §§ 4(ii), 16(i). In the event of a breach, the SPA also required the claimant to notify the other party, in writing, within fourteen days of the breach. *Id.* § 12(i). The SPA included a force majeure clause, protecting the seller, PAZ, from liability for failure to perform, should "the delay or failure result[] from events or circumstances outside its reasonable control." *Id.* § 10. The SPA included an arbitration clause, stipulating that "any dispute" between the parties would "be resolved by arbitration according to the rules of the American Arbitration Association." *Id.* § 15(ii). The SPA also included an integration clause, which stated that it "contains the entire agreement of the Parties . . . and supersedes all prior written and oral agree-

ments, and all contemporaneous oral agreements, relating to such transactions." *Id.* § 16(v).

The SPA required PAZ and MSV to enter into a separate "escrow agreement/paymaster agreement." *Id.* § 7(A)(i). The escrow agreement required the purchase funds to be held in escrow until the goods were delivered to the New York/New Jersey region, inspected, and approved by Barron, and until Barron provided written consent for the funds to be released. Docs. 44 ¶¶ 63–64, 69–70; Doc. 160-2. It further required that the "[f]unds for each shipment shall be released separately from escrow" and that they be disbursed to "[PAZ's] nominated bank account." Doc. 160-2 § 1. The Escrow Agent[4] could only be held liable for "damages arising out of its own gross negligence or willful misconduct," and it was additionally protected from liability by a force majeure clause. *Id.* §§ 8(b), 26. While the escrow agreement required that "all actions or proceedings arising in connection with [it] be tried and litigated exclusively in the federal courts located in New York," it also stated that it was "not intended to amend or supersede any provision of the [SPA]." *Id.* §§ 15, 21.

On October 30, 2020, in accordance with the SPA and escrow agreement, MSV wired $2,000,000 to Shapiro & Associates' trust account to be held in escrow. Doc. 44 ¶ 62; Doc. 160-8. Shapiro told Plaintiffs that shipments would be received in as few as

[4] The escrow agreement identified Shapiro & Associates as Escrow Agent, and Shapiro signed the agreement on behalf of the firm. Doc. 160-2 at 1, 11.

three or four weeks after execution of the SPA and escrow agreement, but no later than 45 days. Doc. 44 ¶ 71. Also in October 2020, Shapiro told Plaintiffs that shipments from Guangdong, China were "on the water" and "ahead of schedule." *Id.* ¶¶ 73, 75. However, in November 2020, Shapiro informed Plaintiffs that the gloves would not be delivered due to ongoing litigation related to his supply of PPE.[5] *Id.* ¶ 74. On December 7, 2020, Shapiro stated in an email to MSV that PAZ could instead import four shipments of gloves from China that would not be medical-grade, as well as four shipments from Thailand that *would* be comprised of medical-grade gloves conforming to the SPA. *Id.* ¶¶ 75, 77. He represented that he was opening a new office in Thailand and had a business associate stationed at the manufacturing plant who could inspect the gloves. *Id.* ¶ 76.

According to the amended complaint, in approximately late November or early December 2020, Shapiro stated that he was having difficulty procuring funds for the first four shipments from China. *Id.* ¶ 78. In a December 7, 2020 email, Shapiro demanded that Plaintiffs release the escrowed funds to pay for the eight shipments, and stated that if the funds were released, MSV could

[5] Defendants presumably referred to the litigation they describe in their motion to vacate: "Paz, like 67 other plaintiffs, were victims of a massive fraud that was perpetrated by the owners and operators of the factory in China that was tasked with manufacturing the Gloves. A Judgment was issued in favor of Paz and the other victims[.]" Doc. 146 at 12.

receive as many shipments of gloves as it wanted within 13 to 17 days. *Id.* ¶¶ 79–80. Barron declined to do so unless Shapiro pledged collateral to cover the amount, so Shapiro drafted a conditional assignment of his membership interest in multiple properties as collateral for the amounts in escrow. *Id.* ¶¶ 81–88. The assignment agreement also stated that Barron would not lose his rights, title and interest in the properties until MSV approved the PPE that was delivered. *Id.* ¶ 99. Shapiro further presented Barron with a document entitled "Guarantee Agreement" which guaranteed repayment of the escrow funds to Barron if PAZ was unable to perform its obligations under the SPA. *Id.* ¶ 94; Doc. 133-3. The guarantee agreement specified that "[r]epayment of the investment shall take place no later than 30 days after it is reasonably concluded that the investment has failed." Doc. 133-3 ¶ 1. The guarantee and assignment agreements were executed by December 14, 2020,[6] and the escrow funds were released to Shapiro. *Id.* ¶ 98. In the 30 days following the execution of the assignment and guarantee agreements, MSV did not receive a single shipment of PPE. *Id.* ¶ 100–01.

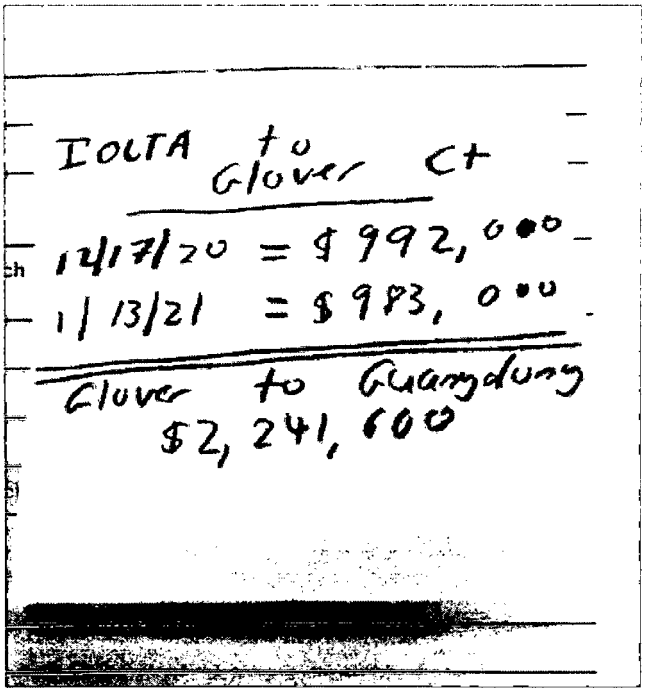
[6] The guarantee agreement was executed on December 14, 2020. *See* Doc. 44-7. The parties do not specify on what date the assignment agreement was executed, and Plaintiffs provide only the un-signed copy, dated December 7, 2020. *See* Doc. 44-4. However, Plaintiffs confirm in the amended complaint that the assignment agreement was in fact executed, thus causing the release of the escrow funds to Shapiro. Doc. 44 ¶ 98.

Nonetheless, Shapiro did not return the escrow funds. *Id.* ¶ 102.

In a January 12, 2021 email to MSV and Barron regarding shipping delays, Shapiro wrote that "Mark released the money on December 17. 45 days from then is February 2," and "the goods should arrive on February 8," so despite the seemingly "endless delays," they were actually "on time and keeping within the schedule of delivery of approximately 45-60 days." Doc. 155-3 at 2. However, as of March 11, 2021, no gloves had arrived, and when Plaintiffs phoned Defendants, Defendants refused to provide them with any expectation as to when a shipment might be received. Doc. 44 ¶¶ 114. Defendants then advised Plaintiffs that four containers of non-medical gloves were in transit to California. Doc. 133-12 at 12; Doc. 44 ¶ 115. Plaintiffs flew to California to inspect them, and found the gloves to be "counterfeits . . . of extremely poor quality and with only 40 gloves per box whereas the SPA required the delivery of boxes containing 100 gloves per box." Doc. 44 ¶ 116–117. MSV promptly rejected the shipment. *Id.* ¶ 120. In a March 23, 2021 email to a business associate, Shapiro acknowledged, "we must give those first four containers to Barren [sic] otherwise returned [sic] $2M to him immediately." Doc. 133-12 at 12. Still, no funds were returned to Barron.

Shapiro allegedly continued to purchase PPE with the escrow funds, but he refused to produce an accounting of the escrow funds. Doc. 44 ¶¶ 122–124. Instead, Shapiro sent Plaintiffs a photo of a note

purporting to explain how the escrow funds were used. *Id.* ¶125; Doc. 43-12. The note simply reads:



Doc. 43-12. Indeed, Shapiro wired $992,000 and $983,000 from the escrow account to "Glover Court Pty Ltd," an Australian company dedicated to importing PPE from Asia to the U.S., on December 17, 2020 and January 13, 2021, respectively. Docs. 133-12 at 11, 160-9. Between December 30, 2020 and January 13, 2021, Glover Court in turn transferred $194,2720 to a factory in China called Guangdong Shenyan New Material Tech, and on January 21, 2021, Glover Court additionally transferred $788,000 to a factory in Thailand called HN

Medical Group Co., LTD. Doc. 133-12 at 22; Doc. 160 ¶23; Docs. 160-10, 160-11.

In a May 19, 2021 letter to Shapiro, MSV and Barron's lawyer demanded that Shapiro return the escrow funds pursuant to the SPA, escrow, and guarantee agreements. Doc. 44 ¶128; Doc. 155-6. On June 17, 2021, Shapiro emailed MSV that "[t]hree containers for Mark Barron," located in a California warehouse, were ready for Plaintiffs to inspect and pick up. Doc. 145-4. Shapiro also wrote, "[c]all me any time to create a schedule for the balance owed to Mark." *Id.* That evening, Barron replied:

> "I'm assuming that you receiving the letter from my lawyer played a part in you offering these gloves. I want to make clear once and for all . . . we DO NOT want gloves at this point being that the market is no longer what it was when our business was initiated . . . . I find it telling that once there is an official threat of the lawsuit taking place, you now all of a sudden have 100,000 boxes to just offer up."

Doc. 145-6. On July 12, 2021, Shapiro emailed Barron offering four more containers, one ready to be inspected in a California warehouse and the other three available to be "directed to the place of [his] choosing." Doc. 145-7. An MSV representative rejected the gloves again, adding, "All I want to do is get Mark back his Principle [sic] right away." *Id.*

Plaintiffs alleged in their amended complaint that the escrow funds were used to purchase PPE which was then sold to third parties for profit, as

confirmed by an anonymous email sent to Barron on August 5, 2021. Doc. 44 ¶127; Doc. 44-13. The email, sent from email address *castfraud@gmail.com* and signed "Paz Global Ventures Whistle Blower," noted:

> I wanted to make you aware that Mr. Shapiro has been involved with defrauding multiple clients and investors in a PPE Nitrile Glove Scam. None of Mr. Shapiro's clients have ever received the correct nitrile glove[s] promised, and many of his clients paid and received no gloves at all.
>
> I have evidence Mr. Shapiro was purposely importing an inferior, cheaply made "blended glove" with investor money and then re-sold these blended glove containers to another buyer. Mr. Shapiro then pocketed all the money between himself and his corrupt business partners.

Doc. 44-13.

By the time Plaintiffs filed their complaint on September 10, 2021, they had not been returned any of the $2 million they provided to Defendants on October 30, 2020, nor provided with any medical gloves conforming to the SPA. Doc. 44 ¶¶53–54, 59.

B. Procedural History and Arbitration Proceedings

MSV and Barron brought this action against Shapiro, Shapiro & Associates, PAZ, and other parties on September 10, 2021, and they amended

their complaint on January 26, 2022. Docs. 1, 44. The amended complaint included claims against PAZ for breach of the SPA, against Shapiro and Shapiro & Associates for breach of the escrow and guarantee agreements, and against Shapiro, PAZ, and other parties for unjust enrichment, negligent misrepresentation, fraud, and related claims. On February 16, 2022, Shapiro, Shapiro & Associates, and PAZ filed a motion to compel arbitration. Doc. 51. In that motion, they argued that the SPA's arbitration clause covering "all disputes" is "explicit, clear and broad," and "applicable to the Escrow Agreement" based on the disclaimer in that agreement that it "is not intended to amend or supersede any provision of the [SPA]." Doc. 54 at 8. Therefore, Defendants argued, "even-though [sic] the dispute will not be litigated in Court due to the arbitration provision, the Plaintiff[s] will have complete redress and justice through arbitration." *Id.* at 11.[7] On September 7, 2022, the Court granted the motion to compel and stayed the action pending arbitration, agreeing with Defendants that "Plain-

[7] In Plaintiffs' opposition to Defendants' motion to compel arbitration, they argued that the arbitration clause in the SPA was voidable based on fraud in the inducement; they argued Defendants "disguised" the SPA clause "by inserting the jurisdiction and venue selection provision in the Escrow Agreement," thereby making the SPA "cleverly supersed[e]" the right to litigate in court which the escrow agreement appeared to confer on Plaintiffs. Doc. 67 at 5. They also argued, in the alternative, that the SPA did not supersede the escrow agreement, per the SPA's disclaimer that it did not "limit or exclude any liability for fraud." *Id.*

tiffs' claims related to the SPA, escrow agreement, and guarantee agreement are subject to the arbitration provision in the SPA." Doc. 89 at 14.

On November 21, 2022, Plaintiffs filed their demand for arbitration. Doc. 133 ¶ 10; Doc. 133-4. In the demand's "brief description of the claims," Plaintiffs alleged that PAZ breached the SPA and Shapiro breached the guarantee agreement. Doc. 160-17. Plaintiffs did not file a separate complaint in the arbitration. *See* Doc. 133-12 at 5 n.1. Defendants filed a joint answer with defenses and counterclaims against MSV and Barron. *See* Doc. 133-12 at 5. The counterclaims were ultimately dismissed. *See id.* at 28. On or about February 26, 2024, the parties submitted witness statements as well as pre-hearing memoranda. *See id.* at 4. The evidentiary hearing was held on March 4 and 6, 2024, and included testimony from Barron, two other MSV representatives, Shapiro, and rebuttal witness Al Germain,[8] as well as "dozens of documents" that the parties submitted as evidence. Doc. 133 ¶¶ 14–15. The Arbitrator noted at the conclusion of the hearing that she would only consider the exhibits used therein. *Id.* ¶¶ 16; Doc. 133-7 at 86.

[8] Germain, an independent sales associate, testified about his own clients' experience ordering and paying for—but never receiving—PPE from Cast Group, a PPE importer to the U.S. that worked with Shapiro. Doc. 133-12 at 23–24. He testified that while he never met Shapiro, he was copied on emails between him and Germain's clients, and that Shapiro told him "he was a lawyer working with [Cast] and was an escrow attorney, and he handled contracts and money for escrow." *Id.*

Nonetheless, she subsequently agreed to accept an additional document that Shapiro submitted on March 7, which he asserted would undermine Germain's testimony. Doc. 133 ¶¶ 17–18; Docs. 133-8, 133-9.

The parties submitted post-hearing memoranda on April 26, 2024. *See* Docs. 133-12 at 4, 145-26. On April 29, 2024, the Arbitrator emailed the parties with a list of questions based on her review of their post-hearing briefs. Doc. 155-1. These included whether Shapiro could be held personally liable for a breach of contract by PAZ regardless of whether Plaintiffs made a "veil-piercing" argument, whether Plaintiffs waived the 25-mile-radius delivery requirement by inspecting the March 2021 shipment in California, whether the transaction "failed" given Defendants offered seven shipments in June and July of allegedly conforming goods, and what constituted a "reasonable time" for delivery of goods pursuant to the SPA. *Id.* In the same April 29 email, the Arbitrator offered that the parties could reply to the questions in writing or through oral argument, and she provided dates on which she could convene a hearing, if requested. *Id.* Both Plaintiffs and Defendants opted to respond to the questions in writing, each submitting a supplemental post-hearing memorandum on May 10 and May 13, 2024, respectively. Docs. 133-11, 160-19. Included in Defendants' supplemental post-hearing memorandum was their argument that Plaintiffs did not assert a breach of contract claim against Shapiro stemming from PAZ's alleged breach of the SPA. Doc. 160-19. Defendants also explained that

they had brought up veil-piercing in their Proposed Findings of Fact and Conclusions of Law, to avoid being "blindsided with such a claim . . . with no opportunity to respond." *Id.* ¶ 1.[9] On May 14, 2024, the Arbitrator declared the hearing closed. *See* Doc. 134 at 3.

On June 3, 2024, the Arbitrator issued her award in favor of MSV and Barron. Doc. 133-12. Based on her review of the "extensive evidence and briefing presented by all parties," the Arbitrator found: "Shapiro took the money from Barron; he did not produce the goods in the manner required by the contract, and he did not return Barron's money despite several admissions that he knew he owed the money." *Id.* at 6, 24–25. In particular, and as relevant to the instant motions, the Arbitrator made the following determinations:

- **PAZ breached the SPA by failing to timely deliver the agreed-upon goods to the New York/New Jersey region.**

[9] In their Proposed Findings of Fact and Conclusions of Law, Defendants cited to New York federal and state caselaw on veil-piercing and corporate separateness, and argued, in part: "MSV's Statement of Claim does not allege a 'veil piercing' claim against Shapiro. And for good reason. The contracting party to the SPA was Paz as a separate entity and there was absolutely no expectation or understanding on the part of MSV that Shapiro would have any personal liability for the obligations of Paz under the SPA merely because Shapiro was the sole and controlling member of Paz . . . . Shapiro, in no respect, abused the privilege of doing business in corporate form and there is no basis for disregarding Paz's separate identity." Doc. 145-26 ¶ 34 (internal citation omitted).

The Arbitrator first determined that any delivery of goods was untimely since the parties' various communications evidenced an expected delivery time of 45-60 days. *Id.* at 14. In considering the applicability of the force majeure clauses, she concluded that "even accounting for shipping problems, a delay from December to June (six months)" based on the March 2020 pandemic was "not reasonable, particularly given the fact that [PAZ] continually received gloves from China in late 2020 and early 2021." *Id.* at 14–15. Then, the Arbitrator found that the March 2021 shipment which MSV inspected in California "contained non-conforming goods that were properly rejected." *Id.* at 27. The Arbitrator further found that while Plaintiffs' verbal notice in March 2021 that Defendants breached did not comply with the SPA's requirement that any notice of breach be in writing, Plaintiffs nonetheless provided appropriate written notice on May 19, 2021, thereby triggering Defendants' 30-day cure period. *Id.* at 16–18. However, Defendants' June shipment was not tendered within the required 25-mile radius of New York City, and the July shipment was outside the cure period. *Id.* at 16–18. Given "neither shipment 'strictly' adhered to the terms of the SPA," Plaintiffs rightfully rejected both. *Id.* at 27. Therefore, the Arbitrator concluded

that PAZ breached the SPA and failed to cure the breach.

- **Shapiro is personally liable for PAZ's breach of the SPA.** The Arbitrator first noted that Plaintiffs timely requested Shapiro be held liable for breach of the SPA, even though they did not bring that claim in their arbitration demand, since they made the request prior to the issuance of the Award and did not submit any evidence after the close of the evidentiary record. *Id.* at 19 n.5.[10] Then, the Arbitrator established that veil-piercing was not required, as New York law permits individual liability for a "corporate officer who participates in the commission of a tort . . . regardless of whether the corporate veil is pierced."[11] *Id.* at 20 (quoting *FLB, LLC v. Cellco Partnership*, 536 F. App'x 132, 133 (2d Cir. 2013) (citation omitted)). Therefore, the Arbitrator noted that because Shapiro was the only individual asserted to have acted on behalf of PAZ, "if Paz Global defrauded Claimants it is beyond cavil that Shapiro

[10] The Award does not specify exactly at what point or through what submission Plaintiffs requested that Shapiro to be held liable for breach of the SPA.

[11] Therefore, Defendants' assertion—in their Proposed Findings of Fact and Conclusions of Law—that Plaintiffs did not argue a veil-piercing claim against Shapiro was of no moment.

is liable for that fraudulent conduct." *Id.* The Arbitrator went on to find that Shapiro personally engaged in fraud warranting personal liability. She analyzed Shapiro's testimony that PAZ was merely a "middleman" between the buyer and "true seller," concluding that "[b]y these statements alone Shapiro has made the case that he defrauded Claimants." *Id.* at 21–22. The Arbitrator found this conclusion was "reinforced by Shapiro's conduct with respect to both the Escrow Agreement and the Guarantee Agreement," given he released Barron's funds to Glover Court, not PAZ, in direct contravention of his explicit obligations under the SPA, escrow, and guarantee agreements. *Id.* at 22. The Arbitrator additionally found that Germain's rebuttal testimony, while not wholly credible, did "corroborate much of the evidence in the instant case." *Id.* at 22–24. The Arbitrator concluded: "In sum, the evidence is overwhelming that Shapiro was personally involved in a fraud in which MSV/Barron were the victims. Contracts are not just pieces of paper. They are legal obligations. Their terms are binding. One party to a contract cannot simply do as he wishes and then disclaim any liability for his actions. Shapiro took the money from Barron; he did not produce the goods in the manner required by the contract, and he did not

return Barron's money despite several admissions that he knew he owed the money. Accordingly, Shapiro is personally liable for the breach of the SPA." *Id.* at 24–25.

- **Shapiro breached the escrow agreement by fraudulently sending the escrow funds to someone other than PAZ.** The Arbitrator analyzed the escrow agreement's provisions pertaining to the Escrow Agent, the law firm Shapiro & Associates, and noted the relationship between the firm and Shapiro—its principal owner and signatory to the escrow agreement on its behalf. *Id.* at 9–10, 25. The Arbitrator then explained that "Shapiro clearly breached his fiduciary duty as a trustee of [the] escrow account when he sent money to someone other than [PAZ]," given the three agreements required that the funds be released only to the seller, and only in order to procure the PPE specified in the SPA. *Id.* at 21, 25. The Arbitrator found Shapiro's own admission that he had "no control over what Glover [Court] did with the $2 million" to be particularly telling in the context of Shapiro's fraudulent "lack of adherence" to the terms of the SPA and escrow agreements. *Id.* 21–22.

- **Shapiro breached the guarantee agreement because after "the invest-**

ment did not succeed," he failed to return Barron's $2 million within 30 days. Doc. 133-12. The Arbitrator found that "the investment did not succeed," and thus the guarantee agreement was triggered, based on her earlier analysis of breach of contract elements and her findings of breach of the SPA. She also evaluated Shapiro's argument that "despite his absolute, irrevocable, and unconditional guaranty," he was protected from liability based on the guarantee agreement's disclaimer that Barron's payment was "an investment, subject to all the generally accepted rules and regulations of investments." *Id.* at 26. The Arbitrator reasoned that interpreting that disclaimer as a limitation on liability would render the guarantee meaningless. *Id.* at 26–27. She explained: "Speculative investments are one thing—contractual obligations are another. There was no speculation here —Respondents signed a contract requiring that [PAZ] supply specified goods under the terms and conditions set forth in the contract. This never happened. Because of that, the investment did not succeed. As Shapiro has not returned the $2 million to Barron within '30 days after it is reasonably concluded that the investment has failed' as required by the Guarantee Agreement, Shapiro has breached

the Guarantee Agreement." *Id.* (internal citation omitted).

On June 4, 2024, MSV and Barron informed the Court of the arbitration award and of their anticipated motion to confirm it. Doc. 129. MSV and Barron now move to confirm the Award, and Shapiro and PAZ cross-move to vacate it. Docs. 132, 144.

II. LEGAL STANDARD

The Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et seq.*, provides a "streamlined" process for a party seeking "a judicial decree confirming an award, an order vacating it, or an order modifying or correcting it." *Hall St. Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 582 (2008). District courts "treat a petitioner's application to confirm or vacate an arbitral award as akin to a motion for summary judgment." *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 136 (2d Cir. 2011) (internal quotation marks and citation omitted). The award should be confirmed "if a ground for the Arbitrator's decision can be inferred from the facts of the case." *D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 110 (2d Cir. 2006) (internal quotation marks and citation omitted). The Second Circuit has recognized that "an extremely deferential standard of review" is appropriate in the context of arbitral awards in order "[t]o encourage and support the use of arbitration by consenting parties." *Porzig v. Dresdner, Kleinwort, Benson, North Am. LLC*, 497 F.3d 133, 139 (2d Cir. 2007). "The arbi-

trator's rationale for an award need not be explained, and . . . [o]nly 'a barely colorable justification for the outcome reached' by the arbitrators is necessary to confirm the award." *D.H. Blair & Co.*, 462 F.3d at 110 (quoting *Landy Michaels Realty Corp. v. Local 32B–32J, Service Employees Int'l Union, AFL-CIO*, 954 F.2d 794, 797 (2d Cir. 1992)). Confirmation of an arbitration award is thus "a summary proceeding that merely makes what is already a final arbitration award a judgment of the court, and the court must grant the award unless the award is vacated, modified, or corrected." *Id.* (internal quotation marks and citations omitted). This "severely limited" review promotes the twin goals of arbitration, namely to "settle[] disputes efficiently and avoid[] long and expensive litigation." *Willemijn Houdstermaatschappij, BV v. Standard Microsystems Corp.*, 103 F.3d 9, 12 (2d Cir. 1997).

Conversely, "[a] party moving to vacate an arbitration award has the burden of proof, and the showing required to avoid confirmation is very high." *D.H. Blair & Co.*, 462 F.3d at 110 (citation omitted). The party moving to vacate an award bears "the heavy burden of showing that the award falls within a very narrow set of circumstances delineated by statute and case law." *Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 388 (2d Cir. 2003). Thus, a party seeking vacatur of an Arbitrator's decision "must clear a high hurdle." *Stolt-Nielson S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671 (2010). Under the FAA, a court may vacate an award:

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

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a). In addition, as "judicial gloss" on these specific grounds for vacatur, the Second Circuit has held that "the court may set aside an arbitration award if it was rendered in manifest disregard of the law." *Schwartz v. Merrill Lynch & Co., Inc.*, 665 F.3d 444, 451 (2d Cir. 2011) (internal quotation marks and citation omitted).

III. DISCUSSION

Plaintiffs seek confirmation of the arbitration award and argue that there is no basis for vacating or modifying it. *See* Docs. 132, 134, 156. Defendants argue that the motion should be vacated or modified because (i) the Arbitrator exceeded her

powers and denied Defendants a fair opportunity to be heard, and (ii) she manifestly disregarded the law. Docs. 144, 146, 160.

A. The Arbitrator Did Not Exceed Her Powers, and the Proceedings Were Not Fundamentally Unfair

Defendants allege that the Arbitrator went beyond her authority and deprived Shapiro of a fair hearing by holding him liable for breaching the escrow agreement, for fraud, and for PAZ's breach of the SPA. First, Defendants argue that all claims related to the escrow agreement were required to be adjudicated in New York courts, not arbitrated. Doc. 146 at 6, 15. Second, they argue Plaintiffs' claims were circumscribed by their demand for arbitration, and thus, given they did not articulate claims against Shapiro for breach of the escrow agreement, fraud, and PAZ's breach of the SPA, those claims were foreclosed. *Id.* at 4–5, 10–11, 15–18. Additionally, Defendants claim the Arbitrator improperly failed to consider or apply certain evidence in her analysis. Doc. 146 at 10–11; Doc. 160 ¶¶ 9, 20–22. Thus, Defendants claim, "the award was a total 'ambush'" and a fundamental deprivation of due process. Doc. 160 ¶ 13.

An arbitrator exceeds her powers under Section 10(a)(4) of the FAA by "considering issues beyond those the parties have submitted for her consideration, or . . . reaching issues clearly prohibited by law or by the terms of the parties' agreement." *Jock v. Sterling Jewelers Inc.*, 646 F.3d 113, 122 (2d Cir.

2011). When a party seeks to vacate an arbitration award by reason of an arbitrator exceeding their power, "the inquiry looks only to whether the arbitrator had the power, based on the parties' submissions or the arbitration agreement, to reach a certain issue, and does not consider whether the arbitrator decided the issue correctly." *Seed Holdings, Inc. v. Jiffy Int'l AS*, 5 F. Supp. 3d 565, 586 (S.D.N.Y. 2014). "Only if the arbitrator acts outside the scope of his contractually delegated authority . . . may a court overturn his determination." *Id.* "An arbitrator cannot be said to have exceeded the scope of his powers unless 'it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.'" *L'Objet, LLC v. Samy D. Limited*, No. 11 Civ. 3856 (LBS), 2011 WL 4528297, at *2 (S.D.N.Y. Sept. 29, 2011) (quoting *Wall St. Associates, L.P. v. Becker Paribas, Inc.*, 818 F. Supp. 679, 684 (S.D.N.Y. 1993), *aff'd*, 27 F.3d 845 (2d Cir. 1994)).

Courts allow for vacatur under Section 10(a)(3) of the FAA if the arbitrator is guilty of misconduct that amounts to violation of "fundamental fairness." *Tempo Shain Corp. v. Bertek, Inc.*, 120 F.3d 16, 20 (2d Cir. 1997). "Arbitral misconduct typically arises where there is proof of either bad faith or gross error on the part of the arbitrator." *In re Cragwood Managers, L.L.C. (Reliance Ins. Co.)*, 132 F. Supp. 2d 285, 287 (S.D.N.Y. 2001) (internal quotations marks and modifications omitted). Arbitrators must "give each of the parties to the dispute an adequate opportunity to present its evidence and

argument," but need not follow "all the niceties observed by the federal courts" such as the Federal Rules of Civil Procedure or the Federal Rules of Evidence, nor hear all of the evidence proffered by a party. *Tempo Shain Corp.*, 120 F.3d at 20 (citations omitted); *see also Global Scholarship Alliance v. Wyckoff Heights Med. Ctr.*, No. 09 Civ. 8193 (RMB), 2010 WL 749839, at *2 (S.D.N.Y. Feb. 24, 2010). There is also "no bright line rule requiring arbitrators to conduct oral hearings." *ST Shipping & Transport PTE, Ltd. v. Agathonissos Special Maritime Enterprise*, No. 15 Civ. 4983 (AT), 2016 WL 5475987, at *4 (S.D.N.Y. June 6, 2016). To demonstrate arbitral misconduct, the challenging party must show that his "*right to be heard has been grossly and totally blocked*," *Stifel, Nicolaus & Co. v. Forster*, No. 14 Civ. 6523 (RWS), 2015 WL 509684, at *5 (S.D.N.Y. Feb. 6, 2015) (emphasis added) (internal quotation marks and citation omitted), and that this exclusion of evidence prejudiced him, *Rai v. Barclays Capital Inc.*, 739 F. Supp. 2d 364, 372 (S.D.N.Y. 2010), *aff'd*, 456 F. App'x. 8 (2d Cir. 2011).

The Court finds that the Arbitrator did not exceed her powers, as her adjudication was within the scope of both the arbitration agreement and the parties' submissions. First, the broad arbitration clause did not limit the scope of arbitration, nor did the escrow agreement, by its language, preclude arbitration of its claims. In any event, and importantly, Defendants are judicially estopped from arguing that the SPA's arbitration provision does not apply to the escrow agreement; Defendants

took the exact opposite position in their motion to compel, and the Court adopted that position in granting Defendants' motion. Docs. 54, 89.[12] *See Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384, 397 (2d Cir. 2011) (judicial estoppel "prevents a party from asserting a 'factual position . . . clearly inconsistent' with a position previously advanced by that party and 'adopted by . . . the court in some manner'" (quoting *Maharaj v. Bankamerica Corp.*, 128 F.3d 94, 98 (2d Cir. 1997))). Therefore, the Court will not depart from its prior holding that all claims related to the SPA, escrow, and guarantee agreements are within the scope of the SPA's arbitration provision. Doc. 89. Second, Defendants do not provide any authority to support the proposition that all claims need to be explicitly identified in a particular written submission to an arbitrator, such as in a demand for arbitration, to be adjudicated therein.[13] By contrast, Plaintiffs cite two cases showing that courts take a broader approach to determining whether an issue was sub-

[12] Defendants argued in their motion to compel arbitration that "the arbitration provision in the SPA is applicable to the escrow agreement and thus the Plaintiff[s] must arbitrate any dispute related to the SPA and the Escrow Agreement." Doc. 54 at 8. They additionally argued that the SPA, escrow, and guarantee agreements all comprised one "global" transaction, and the SPA superseded the escrow agreement. *See* Doc. 89 at 12.

[13] And as Plaintiffs note, Doc. 156 at 5, Defendants attempt to apply Federal Rule of Civil Procedure 15(b)—which governs the amendment of pleadings in a civil trial—to the arbitration. *See* Doc. 134 at 9.

mitted to arbitration "under circumstances which afforded the parties adequate notice." *Lawlor v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 19 Civ. 4145 (BMC), 2019 WL 6253808, at *2 (E.D.N.Y. Nov. 22, 2019); *see also Sociedad Armadora Aristomenis Panama, S. A. v. Tri-Coast S. S. Co.*, 184 F. Supp. 738 (S.D.N.Y. 1960). At bar, Plaintiffs make clear that Shapiro's conduct was put at issue in Plaintiffs' amended complaint filed in the instant civil action, in the evidentiary hearing before the Arbitrator, and in the parties' written submissions to the Arbitrator—including the supplemental post-hearing memoranda addressing the Arbitrator's questions. *See* Doc. 156 at 4.[14] Therefore, notwithstanding that the claims were not each delineated in Plaintiffs' demand for arbitration, the Court finds that the disputes concerning Shapiro's liability were properly "submitted for her consideration." *Jock*, 646 F.3d at 122.[15] The

[14] Additionally, the arbitration clause in this case is broad, covering "all disputes" between the parties. *Cf. Matter of Arb. Between Melun Industries, Inc. & Strange*, 898 F. Supp. 990, 994 (S.D.N.Y. 1990) (holding the arbitrator exceeded its powers in determining an issue that the party "conceivably may have [had] valid claims" about, since that issue was clearly excluded by the arbitration clause which was "quite narrow" and "d[id] not empower the arbitrator to resolve any and all disputes between the parties").

[15] The Court also defers to the Arbitrator's finding that Plaintiffs timely requested Shapiro be held liable for PAZ's breach of the SPA, since "[a] request made prior to the issuance of an award is timely so long as no new evidence is submitted after the evidentiary record is closed." Doc. 133-12 at 19 n.5.

Arbitrator thus acted within her power, based on both the arbitration agreement and the parties' submissions, in finding Shapiro liable. *See Seed Holdings, Inc.*, 5 F. Supp. 3d at 586.

The Court also finds that the Arbitrator did not render Defendants' right to be heard "grossly and totally blocked." *Stifel*, 2015 WL 509684, at *5 (internal citation omitted). The Arbitrator heard testimony by Shapiro and four other individuals, received dozens of exhibits, accepted Shapiro's belated evidentiary submission, and reviewed multiple memoranda by the parties. Moreover, the Arbitrator gave the parties the choice either to submit written briefs or hold additional oral argument to address her list of questions, which explicitly raised the issue of Shapiro's personal liability for PAZ's breach of contract. Shapiro chose the former and filed a supplemental post-hearing brief. Doc. 155-2. Therefore, the Court finds the Arbitrator provided each party with the "opportunity to present its evidence and argument," *Tempo Shain Corp.*, 120 F.3d at 20 (citation omitted), and the arbitration did not violate fundamental fairness.

As to Defendants' claims that the Arbitrator ignored, misunderstood, or improperly declined to take judicial notice of certain evidence—Doc. 146 at 10–11; Doc. 160 ¶¶ 20–22—the Court declines to conduct such evidentiary review. *Tempo Shain Corp.*, 120 F.3d at 20 ("Courts have interpreted section 10(a)(3) to mean that except where fundamental fairness is violated, arbitration determinations will not be opened up to evidentiary review."); *see also Fairchild Corp. v. Alcoa, Inc.*, 510 F. Supp. 2d

280, 289 (S.D.N.Y. 2007) ("[A]n arbitrator has discretion to admit or reject evidence[.]"). Notwithstanding how pertinent Defendants' evidence might have been, Defendants cannot show prejudice, as they have not made a showing that any excluded evidence was "so dispositive to [their] claims that access to them—as opposed to all the other evidence and testimony before the [Arbitrator]—would have changed the outcome of the proceedings." *Rollins v. Goldman Sachs & Co. LLC*, No. 18 Civ. 7162 (ER), 2022 WL 1124823, at *6 (S.D.N.Y. Apr. 14, 2022).[16]

In sum, the Arbitrator acted within the scope of her authority, and the proceeding was not fundamentally unfair.

B. The Arbitrator Did Not Manifestly Disregard the Law or the Parties' Agreements

1. The Law

In some circumstances, a court may vacate an arbitration award where the Arbitrator has manifestly disregarded the law, although such review is

[16] Defendants' reference to *Areca, Inc. v. Oppenheimer & Co.* for the proposition that where "the arbitrator refuses to hear pertinent and material evidence to the prejudice of one of the parties, the arbitration award may be set aside," omits a crucial qualifier. 960 F. Supp. 52, 54 (S.D.N.Y. 1997). *Areca, Inc.* specifies that it is only where an arbitrator engages in misconduct that "amount[s] to a denial of fundamental fairness of the arbitration" that the award may be set aside. *Id.* at 54–55 (citation omitted).

"severely limited." *Halligan v. Piper Jaffray, Inc.*, 148 F.3d 197, 202 (2d Cir. 1998) (citation omitted). "A party seeking vacatur must therefore demonstrate that the Arbitrator knew of the relevant principle, appreciated that this principle controlled the outcome of the disputed issue, and nonetheless willfully flouted the governing law by refusing to apply it." *Westerbeke Corp. v. Daihatsu Motor Co.*, 304 F.3d 200, 217 (2d Cir. 2002); *see also Duferco*, 333 F.3d at 389. "[A]wards are vacated on grounds of manifest disregard only in those exceedingly rare instances where some egregious impropriety on the part of the arbitrator is apparent." *T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc.*, 592 F.3d 329, 339 (2d Cir. 2010) (internal quotation marks and citation omitted). To vacate an arbitration award based on manifest disregard of the law, a party must make a two part showing: (1) "whether the governing law alleged to have been ignored by the arbitrators was well defined, explicit, and clearly applicable," and (2) "whether the arbitrator knew about the existence of a clearly governing legal principle but decided to ignore it or pay no attention to it." *Jock*, 646 F.3d at 121 n.1 (internal quotation marks and citation omitted). Where "the arbitrators do not explain the reason for their decision," it should be upheld if the court "can discern any valid ground for it." *STMicroelectronics, N.V. v. Credit Suisse Sec. (USA) LLC*, 648 F.3d 68, 78 (2d Cir. 2011).

Defendants do not make a showing that the Arbitrator manifestly disregarded the law.[17] Defendants first contend that the Arbitrator manifestly disregarded the law on fraud because the facts of the case could not possibly support a finding that Shapiro engaged in fraud, and because no veil-piercing argument was made in holding him liable for PAZ's breach of the SPA.[18] Doc. 146 at 8, 21. These contentions are entirely conclusory. In evaluating Shapiro's conduct, the Arbitrator carefully considered Shapiro's obligations under the SPA, escrow, and guarantee agreements, the defenses Shapiro proffered at the evidentiary hearing, and the testimony provided by rebuttal witness Germain. *See* Doc. 133-12 at 20–24. In her well-reasoned analysis, the Arbitrator ultimately concluded that "the evidence is overwhelming that Shapiro was personally involved in a fraud in which

[17] To the extent Defendants' arguments hinge on what they contend are the Arbitrator's factual mistakes, *see* Doc. 145-37, these arguments fall outside the scope of the Court's judicial review. *See Westerbeke*, 304 F.3d at 214 ("The arbitrator's factual findings and contractual interpretation are not subject to judicial challenge, particularly on our limited review of whether the Arbitrator manifestly disregarded the law.").

[18] Shapiro also argues for the first time in his sur-reply that that the Arbitrator disregarded New York law against fraud claims that are "duplicative" of contract claims. Doc. 160 ¶ 18–19. Because this argument was not raised in Defendants' earlier memorandum in support of their motion to vacate the Award, Doc. 146, Plaintiffs did not have an opportunity to respond, and the Court will not consider it.

MSV/Barron were the victims." *Id.* at 24. The Arbitrator also considered New York law on when the "corporate veil" shields individuals from liability. *Id.* at 20–21.[19] The Arbitrator even elicited argument from the parties on whether Shapiro could be held personally liable for a breach of contract by PAZ *regardless of whether Plaintiffs made a "veil-piercing" argument*, by including that precise question in her April 29, 2024 list of questions that the parties addressed in their supplemental post-hearing memoranda. The Arbitrator ultimately *declined* to pierce the corporate veil in finding Shapiro liable for breach of the SPA, relying instead on Second Circuit authority providing that veil-piercing is not necessary for holding corporate officers liable for their own fraudulent conduct. Thus, Defendants do not meet the "heavy burden" of "prov[ing] that the arbitrator was fully aware of the existence of a clearly defined governing legal principle, but

[19] Defendants briefly argue that, in holding Shapiro personally liable for PAZ's breach of the SPA without piercing the corporate veil, the Arbitrator also manifestly disregarded "the fundamental public policy of the State of New York." Doc. 146 at 21; *id.* at 7 (citing to *Caremark, LLC v. New York Cancer and Blood Specialists*, 23 Civ. 8508 (NRB), 2024 WL 3413470, at *7 (S.D.N.Y. July 15, 2024)). The Court finds Defendants fail to meet the standard for the "extremely limited" public policy exception, as they do not establish that the Award "violate[s] some explicit public policy that is well defined and dominant," as "ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests." *Caremark*, 2024 WL 3413470, at *7 (quoting *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 42 (1987)).

refused to apply it." *Doscher v. Sea Port Grp. Securities, LLC*, No. 15 Civ. 384 (JMF), 2017 WL 6061653 (S.D.N.Y. Dec. 6, 2017) (citation omitted), *aff'd*, 752 F. App'x 102 (2d Cir. 2019).

Defendants' claim that the Arbitrator manifestly disregarded breach of contract law is likewise unavailing. To the contrary, the Award explicitly identifies and applies the elements of a breach of contract claim. Specifically, the Arbitrator found that 45 days constituted a "reasonable time" for performance under the SPA, and that the "investment did not succeed," as contemplated by the guarantee agreement. These findings were based on a sound evaluation of ample evidence. Doc. 133-12 at 14–15, 27. Defendants' contrary argument that the SPA *was* fully performed and the guarantee agreement was never triggered by an investment failure—and thus neither contract was breached—are plainly insufficient to clear the "high hurdle" for vacatur based on a manifest disregard of the law or the terms of the parties' agreements. *Stolt-Nielson*, 559 U.S. at 671; *see also Eaton Partners, LLC v. Azimuth Cap. Mgmt. IV, Ltd.*, No. 18 Civ. 11112 (ER), 2019 WL 5294934, at *5 (S.D.N.Y. Oct. 18, 2019), *aff'd*, 844 F. App'x 441 (2d Cir. 2021).

Defendants argue, in the alternative, that the Arbitrator manifestly disregarded Plaintiffs' duty to mitigate damages from any breach of contract, because MSV clearly abdicated that duty by rejecting the seven shipments of gloves offered in June and July. Doc. 146 at 13. But the Arbitrator did analyze whether MSV properly rejected the gloves

it was offered, finding that "[t]he March shipment contained non-conforming goods that were properly rejected" and Plaintiffs "were not required to accept the June or July shipments (even if conforming), because neither shipment 'strictly' adhered to the terms of the SPA[.]" Doc. 133-12 at 27. Therefore, Defendants' argument does not pass muster.[20]

2. The Parties' Agreements

A court may also vacate an arbitration award where the arbitrator has manifestly disregarded terms of the parties' agreements. *Schwartz*, 665 F.3d at 451–52. "It is only when an arbitrator strays from interpretation and application of the agreement and effectively 'dispense[s] his own brand of industrial justice' that his decision may be unenforceable." *Stolt-Nielson*, 559 U.S. at 671 (quoting *Major League Baseball Players Assn. v. Garvey*, 532 U.S. 504, 509 (2001)). An arbitrator's interpretation of the contract terms cannot be overruled, even if the court disagrees with it, if the arbitrator provided a "barely colorable justification" for her interpretation. *Schwartz*, 665 F.3d at 452 (quoting *Westerbeke*, 304 F.3d at 222).

Defendants argue that the Arbitrator ignored various agreement terms that limited or foreclosed Defendants' liability: force majeure clauses, the

[20] The Court does not make a determination as to whether a duty to mitigate applied as Defendants' claim, as in any event, the Court "can discern a[] valid ground" for the Arbitrator's finding that MSV and Barron appropriately rejected the goods. *STMicroelectronics*, 648 F.3d at 78.

SPA's notice of breach provision, and the escrow agreement's limitations on the Escrow Agent's obligations and liability. Doc. 146 at 8, 12–13, 14–15, 18–21. This argument is unavailing, as the Arbitrator meaningfully engaged with the relevant contract provisions and carefully considered their applicability. In discussing the force majeure clauses, the Arbitrator analyzed the timing and surrounding circumstances of both the pandemic and the alleged shipping problems from China, ultimately finding that these events did not explain the delivery delays relevant to the contract breaches. Doc. 133-12 at 15. The Arbitrator also thoroughly analyzed the SPA's notice provision, in fact rejecting Plaintiffs' arguments as to whether their March 2021 oral communication regarding breach met the SPA's formal notice requirements; nonetheless, the Arbitrator concluded that Plaintiffs eventually provided the required written notice in May 2021. *Id.* at 15–16. As to the escrow agreement's limitations on liability, the Arbitrator considered the relevant provisions, and after careful consideration of Shapiro's role as trustee of the escrow account, she concluded that his misconduct warranted personal liability. *Id.* at 10, 20, 25. Therefore, the Arbitrator did not disregard contractual terms such that the Award "contradicts an express and unambiguous term of the contract or . . . the award so far departs from the terms of the agreement that it is not even arguably derived from the contract." *Westerbeke*, 304 F.3d at 222.

In sum, Defendants have not shown that the Arbitrator manifestly disregarded the applicable

law or the parties' agreements.

IV. CONCLUSION

For the reasons set forth above, MSV and Barron's motion to confirm the arbitration award is GRANTED, and Shapiro and PAZ's cross-motion to vacate the award is DENIED. The Clerk of Court is respectfully directed to lift the stay, terminate the motions, Docs. 132 and 144, and to close the case.

It is SO ORDERED.

Dated: December 2, 2024
New York, New York

/s/ EDGARDO RAMOS
EDGARDO RAMOS, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

21 CIVIL 7578 (ER)

MSV SYNERGY, LLC and MARK BARRON,

Plaintiffs,

–against–

SAADIA SHAPIRO. SHAPIRO & ASSOCIATES ATTORNEYS AT LAW, PLLC, and PAZ GLOBAL VENTURES, LLC,

Defendants.

JUDGMENT

It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Opinion and Order dated December 2, 2024, MSV and Barron's motion to confirm the arbitration award is GRANTED, and Shapiro and PAZ's cross-motion to vacate the award is DENIED; accordingly, the case is closed.

Dated: New York, New York
December 03, 2024

DANIEL ORTIZ
Acting Clerk of Court

BY:

/s/ NEJAM DULD
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civ. Action No. 1:21-cv-07578-ER

MSV Synergy, LLC and MARK BARRON,

Plaintiffs,

v.

SAADIA SHAPIRO, SHAPIRO & ASSOCIATES ATTORNEYS AT LAW, PLLC, and PAZ GLOBAL VENTURES, LLC,

Defendants.

JUDGMENT

This action having been commenced by plaintiffs MSV Synergy, LLC ("MSV") and Mark Barron ("Barron," and collectively with MSV, "Plaintiffs") on September 10, 2021 by filing of the Complaint (Doc. 1), and Plaintiffs having filed the Amended Complaint on January 26, 2022 (Doc. 44), and defendants Paz Global Ventures. LLC ("Paz Global"), Shapiro & Associates and Saadia Shapiro, Esq. ("Shapiro" and collectively with Paz Global, "Defendants") having filed a motion to compel arbitration (Doc. 51), defendant East 125th Development LLC having filed a motion to dismiss (Doc. 48), defendants Cast Capital Lending Corp. and Vadim Leybel having filed a motion to dismiss

(Doc. 56), and the Court having issued an Opinion & Order, dated September 7, 2022 granting Defendants' motion to compel arbitration and staying this action as against them pending such arbitration and granting the motions to dismiss filed by East 125th Development LLC, Cast Capital Lending Corp. and Vadim Leybel (Doc. 89), and Plaintiffs having filed a Notice of Voluntary Dismissal without prejudice as to defendants Cast Capital Lending, Corp., East 125th Development, LLC, Ari An Friedman, Boris Leybel, Vadim Leybel, and Peter Zvedeniuk (Doc 104), and the Court having so-ordered such Notice of Voluntary Dismissal (Doc. 106), and Plaintiffs having filed a Notice of Voluntary Dismissal without prejudice as to defendants Harlem Residential. LLC and Harlon Sunshine, LLC (Doc. 113), and the Court having so-ordered such Notice of Voluntary Dismissal (Doc. 114), and the arbitrator having issued an Award, dated June 3, 2024 in Plaintiffs' favor and directing Paz Global and Shapiro, jointly and severally, to pay Plaintiffs $2,000,000 plus pre-judgment interest at New York's statutory rate of 9% from May 19, 2021, plus post-judgment interest at the same rate, $63,290.76 in administrative and arbitrator fees and expenses, and $79,233.66 in attorneys' fees (Doc. 133-12), and Plaintiffs having filed a motion to lift the say and confirm an arbitration Award against Paz Global and Shapiro (Doc. 132), and Paz Global and Shapiro having filed a cross-motion to vacate the Award (Doc. 144), and the Court having issued an Opinion & Order dated December 2, 2024 granting the motion to confirm

the Award and denying the cross-motion to vacate the Award (Doc. 161), it is

ORDERED, ADJUDGED AND DECREED: that Plaintiffs MSV Synergy, LLC with an address at 4921 W Paul Avenue, Unit 4, Tampa, FL 33611 and Mark Barron with an address at 4921 W Paul Avenue, Unit 4, Tampa, FL 33611 have judgment and recover against Paz Global Ventures, LLC, having an address of 3145 Coney Island Avenue, Brooklyn, NY 11235, and Saadia Shapiro, Esq., having an address of 325 Maple Street, Englewood, NJ 07631, jointly and severally, in the amount of $2,000,000 plus 9% pre-judgment interest from May 19, 2021 through the date hereof amounting to $642,082.19, plus $63,290.76 in administrative and arbitrator fees and expenses, plus $79,233.66 in attorneys' fees, amounting in all to $2,784,606.61, and that Plaintiffs shall have execution thereon.

Dated: December 11, 2024
New York, NY

/s/ EDGARDO RAMOS
Hon. Edgardo Ramos,
United States District Court Judge

[LETTERHEAD HELLER, HOROWITZ & FEIT, P.C.]

June 6, 2024

Via Email
Hon. Shira Scheindlin
Arbitrator

Re: MSV Synergy, LLC and Barron v. Paz Global Ventures, LLC and Shapiro, Case No. 01-22-0004-8950

Dear Judge Scheindlin:

On June 3, 2024, Your Honor issued a Final Award in favor of Claimants and against Respondents Saadia Shapiro ("Shapiro") and Paz Global Ventures, LLC ("Paz"), jointly and severally, in the principal amount of $2 million, together with interest and attorneys' fees. In the course of the Award, Your Honor rejected Paz's arguments that it was not liable for breach of the SPA, and rejected Shapiro's argument that he was not liable under his Guaranty.

While we strongly disagree with that result for all of the reasons set forth in our post-hearing submissions, those were the issues that were sent to Your Honor for determination as Arbitrator. However, the Award went on to state, in numerous places, that Shapiro had engaged in fraudulent activity with respect to his involvement in the SPA; and that Shapiro was additionally liable on an "alter ego" theory for the contractual breaches of Paz and was also individually liable for breach of the Escrow Agreement.

As the Award recognized, none of these additional claims—for fraud, for alter ego liability and for breach of the Escrow Agreement—were raised in either the Demand for Arbitration or in the Pre-Hearing Brief filed by Claimants. Under these circumstances, we believe it is profoundly unfair and inappropriate for the Award to contain such findings, which are completely unnecessary to support granting full relief to Claimants; a finding in their favor on the SPA contract claim and on the Guaranty is completely sufficient to support the recovery of the entire principal amount, interest and legal fees.[1]

In this regard, even if Your Honor has authority as arbitrator under the AAA Commercial Rules to *sua sponte* "conform the pleadings to the proof", such discretionary authority should not be exercised here. "In deciding whether to allow amendment under Rule 15(b) [to conform the pleadings to the proof], the essential questions are whether the issues were litigated by the parties' express or implied consent and whether the defendant would be prejudiced by the implied amendment, i.e., whether the defendant had a fair opportunity to defend." *Myers v. Moore,* 326 F.R.D. 50 (S.D.N.Y. 2018). "The purpose of Rule 15(b) is to allow the pleadings to conform to issues actually tried, not to extend the pleadings to introduce issues inferen-

[1] Nothing herein should be understood as a waiver of our right to contest the confirmation of the Award in the District Court based on all grounds, including the finding of liability on the SPA and the Guaranty.

tially suggested by incidental evidence in the record." *Browning Debenture Holders' Committee v, DASA Corp.*, 560 F.2d 1078, 1086 (2d Cir. 1977).

Here, it cannot possibly be said that the issues of "fraud", "alter ego" liability and breach of the Escrow Agreement were tried "by the parties' express or implied consent" where (i) Claimants had abundant opportunity to make that request at any time during or after the hearing and Claimants declined (presumably for tactical reasons) to do so, and (ii) I pointed out in my opening statement (with no dispute from Claimant's counsel) that the only two claims asserted were for breach of the SPA and breach of the Guaranty. Moreover, had we known that the scope of the Arbitration included these other matters, we may well have addressed the evidence differently. I can assure the Arbitrator that when I prepared for the hearing with Mr. Shapiro, we focused entirely on the two "contract" issues (that is, whether either Paz or Shapiro breached their contractual obligations, irrespective of scienter or intent, which is of course irrelevant in a contract action); and gave no thought to defending any allegation of fraud.

But even if we would have presented the *identical case* in the Arbitration, those additional claims were simply not a proper part of the Arbitration and we had no notice that—after the arbitration had concluded—they would somehow become fair game and a basis for imposing liability and adverse findings of "fraud" upon Shapiro. It seems to me that strikes at the very heart of due process, which at its essence requires notice and an opportunity to

be heard. *International House v. NLRB,* 676 F.2d 906, 911 (2d Cir. 1982). Indeed, the lack of due process is even more glaring because, separate and apart from the underlying substantive issues, we did not even have an opportunity to address the procedural question of whether a "conformance" is appropriate here, since the Arbitrator did it *sua sponte.*[2]

Finally, we wish to point out that Mr. Shapiro is a member of the Bar of the State of New York and has an unblemished record over four decades of practicing law. That record should not, we respectfully submit, be tarnished by what are, at bottom, gratuitous, unnecessary and unlitigated "findings" of fraud, along with a (no less serious for an attorney) determination that he failed to properly comply with his obligations as an escrow agent—all on claims that were never even asserted by the Claimants and which will make absolutely no difference to the relief granted to Claimants. And while such findings are irrelevant to Claimants' recovery, they may make an enormous difference to Mr. Shapiro. For a lawyer, breaching a contract or a guaranty is one thing; being called dishonest (by a distinguished former federal judge, no less) is quite another.

For these reasons, we respectfully request that Your Honor modify the Award to make clear that it

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[2] With all due respect, we find it difficult to understand how Shapiro could possibly have breached his obligations as Escrow Agent under the Escrow Agreement when the release of the funds was specifically authorized in writing by Mr. Barron in the Guaranty.

does not include any findings as to Mr. Shapiro's fraudulent intent or conduct, or his alleged breach of his duties as an escrow agent.[3]

Respectfully submitted,

/s/

Stuart A. Blander

SAB:cfd

cc: Attorneys for Claimants (via email)
Saadia Shapiro, Esq. (via email)

[3] Because the requested modification will not in any way change the recovery granted to Claimants, we believe that the Arbitrator has authority to grant the requested modification under Rule 52 of the AAA Commercial Rules, as well as CPLR 7511(c)(2).

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v. Buyer and Seller shall share equally in a finder's fee commission in the amount of $0.20 (twenty cents) to be paid to Mr. Ari Friedman.

7. PROCEDURE / PAYMENT:

A. Procedure (1):

i. Upon the execution of this agreement, the Buyer shall wire the sum of $2 million (two million dollars U.S.) to the escrow account of Shapiro and Associates Attorneys at Law, PLLC as the escrow agent and Paymaster. A separate escrow agreement/paymaster agreement shall be executed. Disbursement of all funds to the seller and to any brokers if applicable as well as the payment of any fees and commissions shall be according to the escrow agreement.

ii. Upon completion of production, Seller shall forward the Buyer an SGS certificate and bill of lading, confirming stock specification and volumes.

ii. Buyer shall inspect the goods within 24 hours of arrival in the United States. Within 12 hours of inspection, Buyer shall issue an email, as stated above, to escrow agent releasing the funds from escrow to pay for the particular shipment that has been inspected and approved.

8. REPRESENTATIONS:

The Seller, as applicable, makes the following representations, warranties and covenants:

i. The Seller hereby records that it is a company in good standing, licensed and capable of acting as the Seller in reconciliation with this SPA, where it may resell the products required in this SPA, legally and without encumbrance.

ii. The Seller hereby represents and warrants that as of date hereof it has obtained all necessary corporate, regulatory and third-party approvals (if any) required for the execution, delivery and performance of this SPA.

iii. The Seller has full corporate power and absolute authority to execute, deliver and perform this SPA, and that the execution and delivery by it of this SPA and the performance by it of its obligations hereunder have been duly authorized and all necessary corporate/ regulatory actions completed, and this SPA has been duly executed and delivered by it and (assuming due authorization, execution and delivery by the other Parties) constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms and conditions.

iv. The Seller also represents that it has the ability to procure and deliver the product within the timeframe specified in this SPA.

v. The Seller has no restriction whatsoever on the free distribution/sale/trade of the product.

vi. Unlawful or unauthorized substitution includes used material represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

* * *

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- **CIF** refers to where the Seller covers all costs for delivery, duties, freight, and logistics.
- **Escrow** refers to where a Paymaster manages the financial transaction of all product transactions between the Parties and related third parties.
- **FOB** means free on board, where a buyer assumes all of the costs of duties, insurance, freight and logistics and collects the product at the Seller's designated warehouse.

Section 2 of the SPA is titled "Scope of Agreement". Section 2(i.) provides that "[t]he Buyer agrees to buy and the Seller agrees to sell 250,000 boxes of Nitrile Gloves, with 100 gloves per box, from the Supplier, in strict reconciliation with the parameters, terms and conditions of this SPA." Section 2(iii.) provides that "[t]his SPA, and related transactional documents may only be altered by the Parties' mutual and proactive consent *prior to such change being implemented,* unless the change is required by law or force de majeure circumstances." (Emphasis added). Section 3(iii.), titled

"Quality and Specifications" provides that "Seller will . . . provide the Buyer an independent SGS certification."

Section 4(ii.) of the SPA provides that the "[g]loves shall be delivered to the buyer on a **CIF Delivery Duty Paid (DDP)** basis within a 25 mile radius of the Metropolitan New York/New Jersey area." (Emphasis in original). Section 7 of the SPA covers procedures for payment. Section 7A(i.) provides that upon execution of the SPA the Buyer shall wire $2 million to the escrow account of Shapiro and Associates as the escrow agent and paymaster. This section further provides that "[d]isbursement of all funds *to the seller* . . . shall be according to the escrow agreement." (Emphasis added). Section 7A(ii.) requires the Seller to provide the Buyer with the SGS certificate and a bill of lading, "confirming stock specification and volumes." Section 7A(iii.) provides that buyer shall inspect the goods within 24 hours of arrival in the U.S. When the shipment has been inspected and approved, Buyer will issue an email to the escrow agent to release the funds to pay for the shipment.

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By these statements alone Shapiro has made the case that he defrauded Claimants. He signed a contract on behalf of Paz Global identifying the latter as the Seller. Throughout that contract Seller (defined as Paz Global) undertook to perform many obligations (*e.g.*, "Seller agrees to sell 250,000 boxes of Nitrile Gloves . . . ." (CX 1 at § 2.i.) and

made many representations (*e.g.* "Seller has full corporate power . . . to deliver and perform this SPA" (*id.* at § 8.iii.). To now claim that Paz Global was merely a broker or a middleman means that Shapiro committed a fraudulent act when he signed the SPA.

This conclusion is reinforced by Shapiro's conduct with respect to both the Escrow Agreement and the Guarantee Agreement. The SPA states that "[d]isbursement of all [the escrowed] funds *to the seller* . . . shall be according to the escrow agreement." CX 1 at § 7(A)(i) (emphasis added). The escrow agreement in turn states that "Escrow Agent shall immediately disburse funds held in full, *to Seller's* nominated bank account . . . after receiving an email copy of a bill of lading and an SGS Report . . . ." CX 2 at § 1 (emphasis added). The Guarantee Agreement provides that the "escrow agent may release the funds from escrow in order to purchase the PPE that is the subject of the [SPA]."

Despite these restrictions, Shapiro released Barron's funds from his IOLTA [Interest on Lawyers' Trust Accounts] – presumably the escrow account in which he kept the funds – on the following dates to Glover Court Pty Ltd.[6] in the following amounts:

- December 17, 2020: $992,000 to Glover Court Pty Ltd. RX 426-427

[6] Shapiro testified at the hearing that he had no control over what Glover did with the $2 million that he had received from Barron for deposit in his attorney escrow account. *See* Tr. at 270:21-24; 274:25-275:10.

- January 13, 2021: $983,000 to Glover Court Pty Ltd. RX 433

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several admissions that he knew he owed the money. Accordingly, Shapiro is personally liable for the breach of the SPA.

C. Is Shapiro liable for a breach of the Escrow Agreement?

The Escrow Agreement identified the law firm of Shapiro & Associates as the escrow agent and was signed by Shapiro on behalf of the firm. Shapiro is the principal owner of the eponymously named law firm – Shapiro & Associates. He suggested that Barron wire the funds earlier than required by the SPA, he placed those funds in his IOLTA account, and he released the funds to Glover Court. In taking these actions, Shapiro clearly breached his fiduciary duty as a trustee of an escrow account when he sent money to someone other than the *seller* — as specified in each of the three agreements he signed and then conceded that he had no control over what that recipient did with the money. This supports the conclusion that Shapiro was involved with a fraud that results in his personal liability for breach of the Escrow Agreement.[8]

[8] Shapiro would undoubtedly argue Claimants did not bring a claim for breach of the Escrow Agreement. However, as noted earlier, the pleadings may always be conformed to the proof. In the alternative, this breach of the Escrow Agree-

D. Did Shapiro breach the Guarantee Agreement? Can it be reasonably concluded that the investment failed?

As set forth above, the Guarantee Agreement, dated December 14, 2020, obligated Shapiro to personally guarantee to Barron the repayment of his investment of $2 million should the investment described in the SPA not succeed. This Agreement was signed six weeks after the SPA and the Escrow Agreement. The reason for this additional agreement is uncontested.

Under both the SPA and the Escrow Agreement, Barron's $2 million could not be released from escrow until the gloves were delivered to MSV, inspected, and approved. *See* CX 1 at §

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ment can be viewed as further evidence of the fraud perpetrated by Shapiro that makes him personally liable for the breach of the SPA.

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

Case No. 01-22-0004-8950

In the Matter of the Arbitration between:

MSV SYNERGY, LLC and MARK BARRON,

Claimants,

and

PAZ GLOBAL VENTURES, LLC
AND SAADIA SHAPIRO,

Respondents.

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been duly designated in accordance with the arbitration agreement contained in the Sale and Purchase Agreement ("SPA") dated October 30, 2020, between Claimant MSV Synergy LLC ("Claimant" or "MSV") and Paz Global Ventures, LLC ("Respondent" or "Paz Global"), and having been duly sworn, and having duly heard the proofs, allegations, and arguments by said Parties, do hereby issue this FINAL AWARD.

I. THE PARTIES

MSV is a limited liability company ("LLC") with a principal place of business in Delaware that

engages in various business ventures, including importing and selling personal protective equipment ("PPE"). Mark Barron ("Barron") is a retired professional football player who is now engaged in various business enterprises including MSV. MSV and Barron (collectively "Claimants") were represented throughout the arbitration by the law firm of Meister Seelig & Fein PLLC, 125 Park Avenue, New York, New York 10017.

Paz Global is an LLC with its principal place of business in New York. Saadia Shapiro ("Shapiro") is a licensed attorney in New York and is the managing partner of Shapiro & Associates Attorneys at Law, PLLC ("Shapiro & Associates"). Shapiro is also the sole member of Paz Global. Shapiro & Associates is a law firm with its principal place of business in New York. Shapiro is the principal and owner of Shapiro & Associates. Paz Global was initially represented by Shapiro & Associates, 2291 Seventh Ave., New York, New York, 10030, but just prior to the arbitration hearing the law firm of Heller, Horowitz & Feit, 260 Madison Ave., New York, New York took over the representation of Paz Global. Shapiro has appeared *pro se* throughout this arbitration.

II. OVERVIEW OF THE DISPUTE

This Arbitration concerns three agreements among the parties. The first is the SPA dated October 30, 2020, (Claimants' Exhibit (hereinafter "CX") 1) in which Seller (Paz Global) agreed to sell to Buyer (MSV) 250,000 boxes of powder-free

nitrile medical examination gloves in "strict" adherence to the terms of the Agreement. This agreement was signed by Shapiro on behalf of Seller, and Barron on behalf of Buyer. The second agreement is an escrow agreement dated October 30, 2020, between Shapiro & Associates and MSV. *See* CX 2. This agreement was signed by Barron as Executive Director of MSV Synergy and Shapiro on behalf of Shapiro & Associates, as escrow agent. The third agreement is the Guarantee Agreement dated December 14, 2020, between Mark Barron, Investor, and Saadia Shapiro, Guarantor. *See* CX 10.

Claimants allege that notwithstanding Buyer's satisfaction of its obligations under these agreements (*i.e.* the payment of the $2 million), the Seller failed to deliver the gloves for which Buyer had paid $2 million and has failed to return these funds to Buyer despite demand for return of the funds. Claimants further allege that Shapiro breached the terms of the Guarantee Agreement. In that Agreement, Shapiro had "absolutely, irrevocably, and unconditionally, without offset, defense or counterclaim of any nature" guaranteed to Barron repayment of the $2 million "should the investment specified in the [SPA] not succeed." CX 10. The guarantee provides that such repayment "shall take place no later than 30 days after it is reasonably concluded the investment has failed. Such guarantee to continue in full force and effect until repayment in full . . . ." *Id.* Finally, Claimants assert that Shapiro, on behalf of Shapiro & Associates, escrow agent, breached the Escrow Agree-

ment by releasing the funds to an entity other than that intended by the parties – namely the seller of the goods.

III. PROCEDURALHISTORY

A. Initial Proceedings

The dispute among the parties was originally brought in 2021 by MSV and Barron against Shapiro, Paz Global, and other defendants in the Southern District of New York. *See* CX 17. On September 7, 2022, the district court granted a motion to compel arbitration, brought by Shapiro, Paz, and Shapiro & Associates. *See* CX 19. The district court stayed the federal action pending the conclusion of this arbitration. *See id.* On November 21, 2022, Claimants MSV and Barron filed their demand for arbitration. On December 6, 2023, Respondents Paz Global and Shapiro (collectively "Respondents") filed their Joint Answer with Defenses and Counterclaims against "Claimant" identified in the caption of that document as MSV and Barron.

On December 6, 2022, Respondents moved to join several individuals and several entities as parties to this arbitration. On May 24, 2023, a Partial Final Award was issued by Richard H. Silberberg, denying the application to join any additional parties.

On August 4, 2023, the undersigned issued a scheduling order (Pre-Hearing Order #1) which allowed for a period of discovery and scheduled an evidentiary hearing for February 2024. For personal reasons, the hearing was adjourned from February

to March and was held on March 4 and 6, 2024. A court reporter was present at the hearing and a transcript was provided to the undersigned.

On or about February 26, 2024, prior to the hearing, the parties submitted Pre-Hearing Memoranda and witness statements. Post-Hearing submissions were made on April 26, 2024. On April 29, 2024, after reviewing those submissions, the undersigned posed a series of written questions to the parties. On May 13, 2024, the parties submitted written responses to those questions, denominated as Supplemental Post-Hearing Briefs.

The undersigned has jurisdiction over this dispute pursuant to Section 15(ii) of the SPA, which provides that "[s[hould any dispute arise between the parties, that dispute shall be resolved by arbitration according to the rules of the American Arbitration Association. A party may not submit to arbitration without providing the other party with ten (10) days' notice of the dispute, and 20 additional days to remedy the claim." CX 1. This section further provides that the parties "share the cost of such arbitration; however, should the arbitrator determine the liability of a party or should the claimed disputes be found to be frivolous, the harmed party shall receive from the party causing such harm a refund of any payments made for the cost of the arbitration." *Id.*

Pursuant to Pre-Hearing Order #1, the parties agreed that this arbitration shall be conducted in accordance with the Complex Commercial Rules of the American Arbitration Association. The parties further agreed that the Federal Arbitration Act

and the laws of the State of New York apply to this arbitration. Similarly, Section 15(i) of the SPA specifically provides that the laws of the State of New York shall govern the proceedings.

The undersigned was appointed as the sole arbitrator in accordance with the arbitration agreement.

B. The Evidentiary Hearing

Claimants submitted the following witness statements:

- Mark Barron ("Barron") – 50% Membership interest in MSV
- Victoria Boyle-Hebron ("Boyle-Hebron") – Member of MSV
- Sandy Sandiford ("Sandiford") — Member of MSV
- Al Germain ("Germain") — (Rebuttal witness)

Respondents submitted the following witness statement:

- Saadia Shapiro ("Shapiro")

All witnesses who submitted witness statements testified at the hearing and were cross-examined.

The hearing was declared closed on May 14, 2024.

IV. THE CLAIMS AND COUNTERCLAIMS

In its Demand for Arbitration Claimants brought the following claims for relief.[1]

(1) Breach of the SPA against Paz Global

(2) Breach of the Guarantee against Shapiro

Based on these claims, Claimants seek compensatory damages, interest, counsel fees and the costs of arbitration.

In their Joint Answer with Defenses, Counterclaims, and Additional Claims Respondents asserted the following counterclaims against MSV (*see* ¶¶ 95-101 and WHEREFORE clause of Joint Answer at p. 24):

(1) Breach of contract

(2) Breach of the covenant of good faith and fair dealing

(3) Breach of fiduciary duty

(4) Self-dealing

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[1] While Claimants filed a Complaint in the federal court action, they did not file a separate complaint in this arbitration. The only "pleading" filed by Claimants is the Demand for Arbitration which states in full as follows: "Respondent Paz Global Ventures, LLC ("Seller") breached a Sales and Purchase Agreement by failing to deliver to claimant MSV Synergy, LLC ("Buyer") 250,000 boxes of powder-free nitrile medical examination gloves (the "PPE"). Respondent Saadia Shapiro, Esq. breached a Guarantee Agreement by failing to repay claimant Mark Barron the $2 million he paid, on Buyer's behalf, for the PPE."

(5) Conversion

(6) Unjust Enrichment

(7) Indemnification

Based on these counterclaims, Respondents seek dismissal of the claims against them, unspecified relief on their counterclaims, attorney's fees and "such other and equitable relief that the Court may deem just and proper." *See id.*

V. BACKGROUND FACTS

I have received and considered extensive evidence and briefing presented by all parties concerning the facts involved in this dispute. All of this evidence has been taken into account in reaching my ultimate conclusions. The following statement of facts mentions some of the salient events to provide context for this Award and reflects certain undisputed facts, and certain facts found by the undersigned based on the evidence. It is not intended to represent a comprehensive or complete narrative of all the information that I have considered and evaluated.

A. Contracts Between the Parties

1. Key Sections of the SPA

Section 1 of the SPA is titled "Definitions". The following definitions are particularly important:

- **Buyer** is defined at MSV Synergy LLC

- **Seller** is defined as Paz Global Ventures LLC
- **Product** is defined as 250,000 boxes, with 100 gloves per box, of powder free nitrile medical examination gloves with a glove thickness of at least four mil.
- **Force de Majeure** is defined as "acts of God, such as . . . pandemics which . . . unduly delay the Parties . . . where such delays or preventions are beyond the control of the relevant Party to resolve . . . ."
- **CIF** refers to where the Seller covers all costs for delivery, duties, freight, and logistics.
- **Escrow** refers to where a Paymaster manages the financial transaction of all product transactions between the Parties and related third parties.
- **FOB** means free on board, where a buyer assumes all of the costs of duties, insurance, freight and logistics and collects the product at the Seller's designated warehouse.

Section 2 of the SPA is titled "Scope of Agreement". Section 2(i.) provides that "[t]he Buyer agrees to buy and the Seller agrees to sell 250,000 boxes of Nitrile Gloves, with 100 gloves per box, from the Supplier, in strict reconciliation with the parameters, terms and conditions of this SPA." Section 2(iii.) provides that "[t]his SPA, and related

transactional documents may only be altered by the Parties' mutual and proactive consent *prior to such change being implemented,* unless the change is required by law or force de majeure circumstances." (Emphasis added). Section 3(iii.), titled "Quality and Specifications" provides that "Seller will . . . provide the Buyer an independent SGS certification."

Section 4(ii.) of the SPA provides that the "[g]loves shall be delivered to the buyer on a **CIF Delivery Duty Paid (DDP)** basis within a 25 mile radius of the Metropolitan New York/New Jersey area." (Emphasis in original). Section 7 of the SPA covers procedures for payment. Section 7A(i.) provides that upon execution of the SPA the Buyer shall wire $2 million to the escrow account of Shapiro and Associates as the escrow agent and paymaster. This section further provides that "[d]isbursement of all funds *to the seller* . . . shall be according to the escrow agreement." (Emphasis added). Section 7A(ii.) requires the Seller to provide the Buyer with the SGS certificate and a bill of lading, "confirming stock specification and volumes." Section 7A(iii.) provides that buyer shall inspect the goods within 24 hours of arrival in the U.S. When the shipment has been inspected and approved, Buyer will issue an email to the escrow agent to release the funds to pay for the shipment.

Section 8 of the SPA sets forth the representations of the parties. The key representations are set forth below:

- 8(ii.) Seller represented that it had "obtained all necessary . . . third-party

approvals (if any)" required for it to perform its obligations.

- 8(iv.) Seller represents that it has the ability to procure and deliver the product within the timeframe specified in this SPA.
- 8(ix). Both parties represent that they are not subject to any pending or threatened litigation that could interfere with its performance of the SPA.
- 8(x). "This SPA is the binding legal obligation of each Party and is enforceable in accordance with its terms."

Section 10 of the SPA is titled "Force Majeure." It provides in relevant part that Seller is not liable for any delay if the delay results from events outside its reasonable control. If the delay lasts for seven (7) business days beyond the "stipulated period in the SPA, unless mutually extended by *all the parties,* will terminate automatically with no obligations or liabilities on either party." (Emphasis added). Section 12 of the SPA, titled "Claims" provides that any claims due to breach of obligations must be submitted in writing to the other party within fourteen (14) business days from the date of such breach. Section 14 of the SPA, titled "Breaches and Penalty" provides that each party agrees to indemnify the other for "any and all claims . . . actions . . . costs, expenses . . . proceedings, suits, losses and damages, which are . . . brought against" the other party to the extent caused directly by the acts or omissions of the other

party including "(i) any negligent or tortious conduct, (ii) any breach of any of the representations [in the SPA] . . . ."

Section 15 of the SPA titled "Governing Law, Jurisdiction and Disputes" provides that New York law governs any disputes; any disputes must be resolved by arbitration; the costs of the arbitration will be shared by the parties, unless the arbitrator finds that the one party is liable then the harmed party should recover its costs of the arbitration. Section 15(ii.) provides that "a party may not submit arbitration [of a dispute] without providing the other party 10 days' notice of the dispute, and 20 additional days to remedy the claim."

Finally, Section 16 of the SPA, is titled "General Provisions". The key portions of this section are: (i) Amendments: which states that the SPA "may be amended only in writing, signed by each of the Parties, and any such amendment shall be effective only to the extent specifically set forth in such writing" (iii) "[A]ll notices . . . may be submitted via email, or in writing to the relevant party"; (iii(c)) "Verbal communications will only be valid where such communication is backed up in writing within 3 days . . . ." (iv) "the rights and remedies of the Parties hereunder are cumulative . . . [and] no discontinuance of steps to enforce any such right or remedy, shall preclude any further exercise thereof or of any other right or remedy of such Party"; and (v) which states that the SPA contains the entire agreement of the Parties and supersedes all prior written and oral agreements and all contemporane-

ous oral agreements and that nothing in this clause limits or excludes liability for fraud.

2. Key Provisions of the Escrow Agreement

The Escrow Agreement provides that the Escrow Agent/Paymaster is Shapiro & Associates Attorneys at Law PLLC. The Buyer is identified as MSV Synergy, LLC and the Seller as Paz Global Ventures, LLC. Section 1 of the Escrow Agreement provides that the Escrow Agent shall disburse the funds (*i.e.* $2 million) to *Seller's* nominated bank account within "the same Business Day after receiving an email copy of a bill of lading and an SGS Report confirming that the quantity and specifications of the Products was conducted successfully . . . . Funds for each shipment shall be released separately from escrow as each shipment arrives in the United States and after buyers [sic] inspection and approval. However prior to any distribution from the escrow account, Mr. Mark Barron shall issue authorization for the distribution via email . . . ."

Section 4 of the Escrow Agreement provides that if the Product does not pass inspection, "the Escrow Agent shall return to Buyer all funds within the same Business Day of receiving such written notice of non-compliance from Buyer." Section 8(d) provides that the Escrow Agent shall not be deemed a fiduciary for any of the parties to the Escrow Agreement. This section further provides that the Escrow Agent can only be "liable for damages aris-

ing out of its own gross negligence or willful misconduct." Section 8(m) provides that "no monies are to be released for any purpose from escrow without the written consent and approval of Buyer MSV Synergy/Mark Barron." Section 14 provides that New York law governs this escrow agreement.

3. Key Provisions of the Guarantee Agreement

The Preamble to the Guarantee Agreement provides that Shapiro, in order to induce Barron to invest $2 million for the purchase of PPE from Paz Global pursuant to the PSA [sic] [Purchase and Sale Agreement] and the escrow agreement, "absolutely, irrevocably and unconditionally, without offset defense of counterclaim of any nature, guarantees to Investor [Barron] the repayment of the Investment should the investment specified in the PSA not succeed." Section 1 of the Guarantee Agreement provides that "[r]epayment shall take place no later than 30 days after it is reasonably concluded that the investment has failed. Such guarantee to continue in full force and effect until repayment in full of the entire Investment amount." Section 3 provides that this is not a loan or joint venture but is an investment "subject to all the generally accepted rules and regulations of investments." Section 5 of the Guarantee Agreement provides that it "may be changed, altered or modified only by a written agreement signed by both the Investor and the Guarantor."

B. Timeline of Key Events

Set forth below is a timeline of the key events that together tell the story of the relationship between the parties to this arbitration.

- Mid-2020: Shapiro was introduced to Peter Zveduniuk ("Zveduniuk"), a principal of Glover Pty Ct., Ltd ("Glover") (an Australian company) and Vadim Leybel ("Leybel"), a principal of Cast Group, both of whom dealt with importing PPE from Asia to the U.S. *See* Witness Statement of Saadia Shapiro at ¶ 18. Shapiro permitted Cast to authorize its U.S. customers to transfer their funds for the purchase of PPE from factories in Asia through Paz Global. *See id.* at ¶¶ 21-22; 46, 54.
- October 2020: Shapiro was introduced to Ari Friedman ("Friedman") who knew MSV members Sandiford and Boyle-Hebron. *See id.* at ¶¶ 6, 9, 19, 64, 98.
- October 21, 2020: Boyle-Hebron called Shapiro explaining that she and Sandiford were "advisors" to Barron. The subject of the call was that Barron sought to purchase "protective gloves" to be sold in the U.S. *Id.* at ¶ 19.
- October 30, 2020: MSV and Paz Global entered into the SPA; MSV and Shapiro & Associates entered into the Escrow Agreement; and Barron Co. LLC (wholly owned

by Barron on behalf of MSV) wired $2 million into the escrow account maintained by Shapiro & Associates.

- December 7, 2020: email from Shapiro to Sandiford and Boyle-Hebron stating MSV could get as many containers of PPE as they want "between 13 and 17 days from today if we pay for FOB China." That would mean that the money would be "released from Escrow upon receipt of an SGS report and bill of lading as it gets loaded onto trucks in China." CX 5.
- December 14, 2020: Shapiro entered into the Guarantee Agreement with Barron. The Agreement is dated December 7, 2020, but apparently executed on December 14. Shapiro assigned 100% of his membership interest in Harlem Sunshine, LLC [a real property venture] to Barron as "valuable consideration as a means of securing the sum of $2 million currently held in escrow. . . . As consideration for this assignment, Assignee [Barron] authorizes the release of $2 million currently held in escrow . . . for the purpose of purchasing PPE according to the . . . PSA [sic]." CX 10.
- December 17, 2020: Shapiro released $992,000.00 of the escrowed funds to Glover Court PTY Ltd. *See* Respondents' Exhibit (hereafter "RX") 427 (Chase for Business document showing sender of

wired funds, recipient of wired funds, date of the transaction, and amount of the wired funds).

- December 30, 2020: Glover wired $793,000.00 to Guangdong Shenyan New Material Technology Co. Ltd. in China. *See* RX 428.
- January 5, 2021: Glover wired $788,544.00 to Guangdong Shenyan New Material Technology Co. Ltd, in China. *See* RX 430.
- January 12, 2021: Shapiro emailed Sandiford stating that the gloves "have been ready for weeks" but that Seller was "having immense trouble getting them on a ship." Shapiro stated that $2 million was released from escrow on December 17, 2020, and that Seller was targeting delivery of the gloves for 45 days thereafter – i.e. February 2, 2021. Finally, Seller reported to Sandiford that it was "on time and keeping within the schedule of delivery of approximately 45-60 days." CX 11.
- January 12, 2021: Glover wired $211,736.00 to Guangdong Shenyan New Material Technology Co. Ltd, in China. *See* RX 432.
- January 13, 2021: Shapiro released $983,000.00 to Glover Court Pty Ltd. *See* RX 433 (Chase for Business document showing sender of wired funds, recipient of wired funds, date of the transaction, and amount of the wired funds. Additional

information on this form states: "Message to recipient Barron 8 ctn").

- January 13, 2021: Glover wired $149,440.00 to Guangdong Shenyan New Material Technology Co. Ltd, in China. *See* RX 434-436 (duplicates).
- January 21, 2021: Glover wired $785,000.00 to HN Medical Co. Ltd in Bangkok, Thailand. *See* RX 437.
- March 10, 2021: Four containers of gloves were tendered to MSV in California ("March 2021 Containers"). However, these containers contained "non-medical" gloves. *See* RX 591. Sandiford inspected the shipment in California, determined the gloves were non-conforming, and MSV rejected the shipment.
- March 10-12, 2021: Letter from Boyle-Hebron to Barron stating that Paz Global should pay MSV in compensation for delays in delivering the gloves to MSV. *See* RX-100). $38,400 was paid to MSV and accepted by it. *See* Transcript of Hearing ("Tr.") at 154-156 (Sandiford); and 620-625 (Boyle-Hebron). *See also* RX 440 (Chase for Business document showing wire transfer of $38,400 to MSV on March 17, 2021).
- March 23, 2021: email from Shapiro to Leybel (a principal and owner of Cast Group that worked with Paz Global on this transaction) stating that "we must give

those first four containers to Barren [sic] otherwise returned [sic] $2M to him immediately." CX 12

- May 5, 2021: Seller offered plans for the "repayment" of $2 million to MSV. CX 21.
- May 13, 2021: email from Boyle-Hebron to Shapiro stating that despite Paz Global having received containers of gloves, "you [Paz Global] opted out of fulfilling your obligation to MSV." CX 13.
- May 14, 2021: email from Shapiro to Boyle-Hebron stating, in relevant part, that "Mark will be made whole" and offering to explain the "steps and legal action we have taken to get the product out of the factory or [] his money back." CX 15 at p.4.
- May 19, 2021: Letter from Adam Kenner, Esq. on behalf of Barron and MSV to Shapiro formally demanding repayment of the $2 million and informing Shapiro of his clients' intent to sue Shapiro for breach of contract and other claims if damages in the amount of $25 million were not paid by Shapiro.
- June 17, 2021: Paz Global notified MSV that it had three containers of medical grade cloves available for MSV to pick up at a warehouse in California ("June shipment"). *See* RX 171 and 172.

- June 17, 2021: Barron rejected the June shipment stating that "we DO NOT want gloves at this point being that the market is no longer what it was when our business was initiated." RX 172.
- June 21, 2021: email from Shapiro to Barron stating that "Your money was sent to the factory within days of you releasing it on December 17, 2020. . . . The factories that received the money did not deliver, or what was delivered was defective." The email also used the phrase "a deal gone bad". CX 16.
- July 12, 2021: Paz Global offered MSV four containers of gloves that were made available in California ("July shipment"). *See* RX 198. MSV did not accept receipt of these gloves. *See* RX 199 (email from Sandiford to Shapiro).
- September 10, 2021: MSV and Barron sued Paz Global, Shapiro and others in federal court in the Southern District of New York.
- November 21, 2022: MSV and Barron commenced the instant arbitration against Paz Global and Shapiro.

VI. THE ISSUES

A. Did Paz Global breach the SPA by failing to deliver medical grade gloves in New York in a timely manner?

B. If Paz Global breached the SPA, is Shapiro also liable for that breach?

C. Did Shapiro, acting on behalf of his law firm as escrow agent, breach the Escrow Agreement?

D. Did Shapiro breach the Guarantee Agreement? Can it be reasonably concluded that the investment failed?

E. Shapiro's Counterclaims

VII. ANALYSIS

A. Did Paz Global breach the SPA by failing to deliver medical grade gloves in New York in a timely manner?

"The elements of a breach of contract claims are (1) the existence of a contract, (2) the plaintiff's performance, (3) the defendant's breach, and (4) resulting damages." *Alloy Advisory, LLC v. 503 W. 33rd St. Assocs., Inc.,* 195 A.D. 3d 436 (1st Dep't 2021) (internal citations omitted). There is no dispute here that the SPA is a contract duly executed by MSV and Paz Global. It is also undisputed that Claimants performed their initial obligation under the contract – by wiring $2 million to Shapiro's escrow account. However, Respondents argue that Claimants did not perform their obligations under the contract because they refused to inspect and accept shipments of gloves tendered in June and July 2021.

There are several problems with respect to Respondents' argument. The first question is whether delivery in June or July 2021 was reasonable for delivery of the gloves, given that the contract was signed in October 2020. Section 2-309 of the Uniform Commercial Code provides: "The time for shipment or delivery . . . under a contract if not provided in this Article or agreed upon shall be a reasonable time." N.Y. U.C.C. § 2-309(1). The SPA did not specify a time for delivery. Thus, a reasonable time must be determined considering the "nature, purpose and circumstances" surrounding the anticipated delivery of the goods. *See* N.Y. U.C.C. § 2-309, cmt. 1. There is evidence in the record that the parties intended that delivery would occur within 45 to 60 days. In a January 12, 2021 email to Barron, Sandiford, and Boyle-Hebron, Shapiro wrote as follows: "Please note, that Mark released the money on December 17. 45 days from then is February 2. According to the shipping schedule the goods should arrive on February 8. Despite the fact that it seems like there have been endless delays, in reality we have been on time *and keeping within the schedule of delivery of approximately 45-60 days* (February 8 would mean 51 days." CX 11 (emphasis added). In an email to Shapiro dated March 10, 2021, Boyle-Hebron of MSV wrote: "As you are fully aware, we've been extremely patient; the allotted time (*45 days*) in which agreement states, has surpassed threefold." RX 100 (emphasis added). Finally, on March 23, 2021, Shapiro wrote to Leybel "we must give the first four containers to Barren [sic] other-

wise returned $2 million to him immediately." CX 12. If a "reasonable time" had not yet expired as of that time, there would be no need to return the funds to Barron *immediately*.

Respondents argue that the pandemic was an event of force majeure (as defined in the SPA) which would explain delay in receipt of the gloves.[2] But even accounting for shipping problems, a delay from December to June (six months) is not reasonable, particularly given the fact that Seller continually received gloves from China in late 2020 and early 2021. *See* CX 13.

Respondents' last-minute proffer of newspaper articles discussing shipping delays cannot be accepted in evidence. On March 8, 2024, the undersigned advised the parties via email that the evidentiary record in this arbitration was closed. Moreover, newspaper articles are not an appropriate subject for judicial notice, and I decline to take such notice of the content of these articles.

In sum, Claimants were not required to accept the June or July shipments. An additional reason supporting this conclusion is set forth immediately below – notice of the breach and expiration of the cure period.

The second question is determining when Claimants first notified Respondents of their breach of the SPA. Respondents concede that

[2] It is also worth noting that Respondents were well-aware of the pandemic which began in March of 2020, which was ten months prior to Respondents confirming in January 2021 that it would deliver the gloves in 45 days.

Claimants sent a notice of breach (from legal counsel) on May 19, 2021.[3] However, Claimants argue that there had been an earlier notice of breach that satisfied the contractual requirements for providing such a notice. Boyle-Hebron testified that on either March 10 or March 11, 2021, she spoke with Shapiro and "listed all of our quarrels with what he was breaching." Tr. at 62. This constitutes verbal notification of a breach. But the SPA requires that a verbal notice must be confirmed by a writing within three (3) days. Claimants argue that the written confirmation is found in the March 10 email from Boyle-Hebron to Shapiro. *See* RX-100. I disagree. The word "breach" is not found anywhere in that email nor is there any indication of an expected cure period. The March 10 email is really a request to Shapiro to compensate Barron for the "loss of time, money and profits during the last nineteen weeks." In fact, the email concludes with "[i]n spite of it all, we are still looking forward to building a profitable partnership" and indicates that payment for lost time and money would be fair and reasonable. This cannot be viewed as a notice of breach in accordance with the terms of the contract.

Respondents next argue that somehow Claimants waived their right to assert a breach of contract claim because they did not do so when

[3] The June shipment was available within thirty (30) days (the cure period) of the May 19, 2021, formal notice of breach but the July shipment was made available more than thirty (30) days after the notice was sent.

they first became aware of a breach (*i.e.* the non-conforming March shipment). As set forth above, Section 16(iv.) of the SPA makes it quite clear that the failure or decision not to enforce a right does not preclude a party from doing so at a later date. This is a classic non-waiver provision that has been routinely enforced in New York. *See, e.g., Awards.com, LLC v. Kinko's Inc.*, 42 A.D.3d 178, 188 (1st Dep't 2007); *CrossLand Sav., FSB v. Loguidice-Chatwal Real Estate Inv. Co.*, 171 A.D.2d 457, 457 (1st Dep't 1991). To conclude otherwise would prevent a party from trying to negotiate a resolution rather than declare a breach at the first sign of trouble for fear that if the negotiations falter the party would never be able to assert a claim. That cannot be right.

I further conclude that the SPA's requirement that a notice of breach must be served within fourteen (14) days of a breach (CX 1 at § 12(i.)) was tolled by the parties' mutual decision to attempt to resolve their dispute. On March 10, 2021, as noted above, Boyle-Hebron gave Respondents oral notification of breach. This oral notification was followed by an email that reiterated the breach but proposed a resolution in lieu of pursuing a breach of contract claim. *See* Tr. 62:10-63:2 and RX 100. The fourteen-day time frame was satisfied and then tolled by the parties' ongoing negotiations.

Finally, Claimants argue that Respondents waived the requirement of receiving a formal notice of breach when they acknowledged, on several occasions, that Barron was entitled to a return of his money. *See* CX 12 (March 23, 2021 (Shapiro stating

"we must give those first four containers to Barren [sic] otherwise returned $2 million to him immediately")); CX 21 (May 5, 2021 (Shapiro proposing a payment plan to Barron)); and CX 16 at 4 ("Mark will be made whole . . . ."). Once again, I disagree. While it is true that Respondents knew that the March shipment did not satisfy the terms of the SPA (*i.e.* did not "strict[ly] compl[y]" with the terms of the SPA), both parties appeared willing to continue in the hope that the deal could be salvaged. Respondents did not knowingly, willfully, or explicitly waive any of their rights. Respondents were still entitled to know when/if Claimants were declaring a breach and had the right to the contractual thirty-day notice and cure period. When Claimants determined on May 19, 2021, that the transaction could not be salvaged, and sent Respondents a formal and legal notice of breach, the thirty-day cure period was triggered.

That leaves the issue of the June shipment which was tendered twenty-nine days after the May 19 notice of breach (*i.e.* on June 17, 2021). However, the June 17 email notified Claimants that a shipment of goods was available for inspection at a warehouse in California. *See* RX 171. This, of course, was not in "strict compliance" with the terms of the SPA which required delivery within a 25-mile radius of New York City – a condition that was never waived by Claimants.[4]

[4] Respondents argue that Claimants waived this condition by traveling to California to inspect the March shipment. Once again, that is not a knowing and voluntary waiver of a

In addition, the documents attached to the June 17 email raise some serious concerns. The invoice dated April 29, 2021, from the Cast Group to Paz Global indicated a Bill to: Pan American Marketing Group. This is definitely not MSV. The shipper is listed as "Fuying International Trading Co., Ltd aka ZhongShan Fuying Trading Co., Ltd" which was not either of the factories in China that received MSV's funds. Finally, the party to be notified of the shipment was Tran Smart Logistics – a name that was never associated with MSV. *See* RX 171. MSV had every reason to be concerned that this shipment was intended for a different buyer who rejected the shipment, and that Paz Global was trying to sell those gloves to MSV.

In sum, the June offer of these containers did not "cure" the breaches described in MSV's May 19 notice of breach. Nor did the offer strictly comply with the terms of the SPA. Accordingly, MSV was not required to accept this shipment and did not breach the SPA by failing to do so.

For the reasons set forth above, Respondent Paz Global breached the terms of the SPA and is therefore liable to Claimants for that breach.

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term in the contract which, as noted above, contains an explicit non-waiver clause. Moreover, the SPA requires that any amendment of its terms must be in writing and signed by both parties. *See* CX 1 § 16(i.). The SPA was never amended to permit delivery outside the New York area. For the same reason, Claimants did not waive their contractual right to purchase medical grade gloves as specified in the SPA, even if they considered accepting a shipment of non-medical grade gloves on a single occasion. As noted, any amendment of the SPA must be in writing and signed by both parties.

B. If Paz Global breached the SPA, is Shapiro also liable for that breach?

Shapiro argues that Claimants did not bring a claim against him for breach of the SPA. Shapiro is correct. The only claim brought against Shapiro was for breach of the Guarantee Agreement. *See* Arbitration Demand alleging that "respondent Paz Global breached the SPA by failing to deliver to MSV" 250,000 boxes of power free nitrile medical examination gloves and that "Respondent Shapiro breached a guarantee agreement by failing to repay claimant Mark Barron the $2 million he paid on buyer's behalf for the PPE." Shapiro also correctly notes that Claimants did not make an application at the close of the hearing to amend the pleadings to conform to the evidence. Nonetheless, for the reasons set forth below I conclude that the evidence adduced at the hearing supports the conclusion that Shapiro is personally liable for the breach of the SPA by Paz Global.[5]

Under New York law, "[a] corporate officer who participates in the commission of a tort may be held individually liable . . . regardless of whether the corporate veil is pierced." *FLB, LLC v. Cellco P'ship*, 536 F. App'x 132, 133 (2d Cir. 2013) (quot-

[5] While it is true that Claimants did not make a request for the pleadings to be conformed to the proof, they do now request that Shapiro be held liable for the breach of the SPA. A request made prior to the issuance of an award is timely so long as no new evidence is submitted after the evidentiary record is closed. In any event, the trier of fact has the power to conform the pleadings to the proof.

ing *Fletcher v. Dakota, Inc.*, 948 N.Y.S.2d 263, 267 (1st Dep't 2012)); *See also DER Travel Servs., Inc. v. Dream Tours & Adventures, Inc.*, 2005 WL 2848939, at *13 (S.D.N.Y. Oct. 28, 2005) (collecting cases) (holding that "Under New York law, a corporate officer or employee is not insulated from liability for their own acts of fraud by virtue of their status as a corporate officer or employee; there is no need to pierce the corporate veil in order to hold corporate officers or employees individually liable for their own acts of fraud.")

Shapiro testified at the evidentiary hearing that he was the owner of Paz Global and its sole member. *See* Tr. at 195:5-9. *See also* Shapiro Witness Statement at ¶-46 and Respondents' Proposed Findings of Fact and Conclusion of Law ("Resp. FOF/CL") at ¶1. There is no evidence in the record that anyone other than Shapiro acted on behalf of Paz Global. Thus, if Paz Global defrauded Claimants it is beyond cavil that Shapiro is liable for that fraudulent conduct.

Shapiro's defense is that Paz Global was not really the seller but was only a "middleman" between the Buyer and the true seller which was the Cast Group. *See* Resp. FOF/CL at ¶5. Shapiro also claims that Paz Global was only a broker with respect to the purchase and sale of the gloves and would earn a brokerage commission. *See id.* Shapiro further claims that he permitted Cast to authorize its U.S. customers to transfer their funds for the purchase of goods from factories in Asia through Paz Global. *See id.* at ¶6. He contends that "Paz had no involvement in the sourcing of goods,

or in the manufacturing or sale process for PPE, other than as a conduit for the transfer of the funds and was merely a broker with respect to the transactions effected by Cast and Glover." *Id.* at ¶ 7.

By these statements alone Shapiro has made the case that he defrauded Claimants. He signed a contract on behalf of Paz Global identifying the latter as the Seller. Throughout that contract Seller (defined as Paz Global) undertook to perform many obligations (*e.g.*, "Seller agrees to sell 250,000 boxes of Nitrile Gloves . . . ." (CX 1 at § 2.i.) and made many representations (*e.g.* "Seller has full corporate power . . . to deliver and perform this SPA" (*id.* at § 8.iii.). To now claim that Paz Global was merely a broker or a middleman means that Shapiro committed a fraudulent act when he signed the SPA.

This conclusion is reinforced by Shapiro's conduct with respect to both the Escrow Agreement and the Guarantee Agreement. The SPA states that "[d]isbursement of all [the escrowed] funds *to the seller* . . . shall be according to the escrow agreement." CX 1 at § 7(A)(i) (emphasis added). The escrow agreement in turn states that "Escrow Agent shall immediately disburse funds held in full, *to Seller's* nominated bank account . . . after receiving an email copy of a bill of lading and an SGS Report . . . ." CX 2 at § 1 (emphasis added). The Guarantee Agreement provides that the "escrow agent may release the funds from escrow in order to purchase the PPE that is the subject of the [SPA]."

Despite these restrictions, Shapiro released Barron's funds from his IOLTA [Interest on Lawyers' Trust Accounts] – presumably the escrow account in which he kept the funds – on the following dates to Glover Court Pty Ltd.[6] in the following amounts:

- December 17, 2020: $992,000 to Glover Court Pty Ltd. RX 426-427
- January 13, 2021: $983,000 to Glover Court Pty Ltd. RX 433

These two transfers total $1,975,000.00 – very close to the $2 million transferred by Barron to Shapiro & Associates escrow account. Needless to say, Glover Court Pty Ltd. was not the Seller identified in the SPA.

The following transfer of funds was then made by Glover to the following entities in the following amounts on the following dates:

- December 30, 2020: $793,000.00 from Glover Court to Guangdong Shenyan. RX 428
- January 5, 2021: $788,544.00 from Glover Court to Guangdong Shenyan. RX 430
- January 12, 2021: $211,736.00 from Glover Court to Guangdong Shenyan. RX 432
- January 13, 2021: $149,440.00 from Glover Court to Guangdong Shenyan. RX 434-436

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[6] Shapiro testified at the hearing that he had no control over what Glover did with the $2 million that he had received from Barron for deposit in his attorney escrow account. *See* Tr. at 270:21-24; 274:25-275:10.

- January 21, 2021: $785,000.00 from Glover Court to HN Medical Group Co. Ltd (Bangkok Thailand) RX 437

The transfers to the Guangdong Shenyan factory total to $1,942,720 – again very close to the $2 million that Barron sent to Shapiro. The sole transfer to HN Medical Group is $785,000. Obviously not all of these transfers came from Barron's $2 million. Neither of these two factories sent goods to MSV/Barron that complied with the terms of the SPA. The July shipment, which appears to be of conforming goods, was from a different factory – Fuying International Trading Co. There is no evidence that Barron's funds were ever transferred to this factory. This documentary record of the transfers of funds further demonstrates that lack of adherence to the terms of the SPA and the Escrow Agreement.

The conclusion that Shapiro engaged in fraud with respect to the sale of PPE to Claimants – which would make him liable for the SPA's breach of contract — is further supported by the testimony of Al Germain. *See* Tr. 525:1-617:20. Although I decline to credit parts of his testimony – particularly those regarding Shapiro's relationship with the Cast Group and the existence or scope of any FBI investigation – there are other portions of the testimony that I did find to be credible. Germain testified in substance that he was an independent sales associate working with the Cast Group from 2020-2021. He identified *personal clients of his* – World Medical Distributor owned by Eugene Bersot

and Mike Harper of Summit Medical. *See* Tr. at 532:4-19. He also identified two other clients — Frontline Group and Sterling Medical (owned by Naimish Patel). *See id.* at 537:22 – 538:4. He testified that they all ordered PPE from Cast, who he said worked with the same players that appear here – namely Leybel, Zveduniuk, and Shapiro – and that his clients paid money for PPE but never received the goods. He also testified that he was aware of another lawsuit against Paz Global, Shapiro, and others making allegations that are strikingly similar to those made here. Germain identified the plaintiff in that case as GP Trading Partners. *See id.* at 537:4-6. Claimants' counsel produced a copy of the docket in that case which was filed in the Western District of New York on November 18, 2022. While a complaint is only an allegation – yet to be proven – Germain was aware of this case and as noted above it does allege a very similar course of conduct by the same actors as Respondents in this arbitration.

Although Germain never met with Shapiro, he testified that he was copied on emails between Shapiro and Germain's clients. He also exchanged emails directly with Shapiro. *See id.* at 542:3-20. He testified to the experiences of his own clients with respect to their efforts to purchase PPE and how they ended up losing their money and not receiving the product. *See id.* at 549:17-551:2. See *also id.* at 576:21-24 (in response to question from Respondents' counsel as to the source of his knowledge, Germain answered "it came from my own experience of talking to the clients that were

mine"). While he did speak in generalities about the many documents he had seen – there were some specific documents he mentioned that corroborated the evidence in this case. For example, he testified that he saw bank records of where the money went. "[T]hey had been promising clients that the money was direct to Asia factories. . . . I was shocked to even see that the money had actually been sent to Australia . . . ." *Id.* at 557:20-558:7. The uncontradicted evidence is that Glover Court Pty Ltd. is located in Australia. He also testified that Shapiro told him "that he was a lawyer working with them [Cast] and was an escrow attorney, and he handled contracts and money for escrow." *Id.* at 563:13-17. When questioned by Shapiro (appearing *pro se*) Germain testified that "they – the clients paid more to you, you made a profit off the initial sale, and then, when they got the wrong product, you feigned a story, said you would give them the replacement, never did, and then resold that same product like it was yours, and made five times as much money." *Id.* at 607:17-22.

Germain's testimony was not credible in many respects because he did not produce any documents to back up his testimony. He would often say "I can find those" "I have those" 'I have to look for those" but the fact is he didn't produce them. Nonetheless, at a high-level of generality, and based on his experience *with his own clients and at least one statement Shapiro made directly to him,* his testimony does corroborate much of the evidence in the instant case.

In sum, the evidence is overwhelming that Shapiro was personally involved in a fraud in which MSV/Barron were the victims.[7] Contracts are not just pieces of paper. They are legal obligations. Their terms are binding. One party to a contract cannot simply do as he wishes and then disclaim any liability for his actions. Shapiro took the money from Barron; he did not produce the goods in the manner required by the contract, and he did not return Barron's money despite several admissions that he knew he owed the money. Accordingly, Shapiro is personally liable for the breach of the SPA.

C. Is Shapiro liable for a breach of the Escrow Agreement?

The Escrow Agreement identified the law firm of Shapiro & Associates as the escrow agent and was signed by Shapiro on behalf of the firm. Shapiro is the principal owner of the eponymously named law firm – Shapiro & Associates. He suggested that Barron wire the funds earlier than required by the SPA, he placed those funds in his IOLTA account, and he released the funds to Glover Court. In taking these actions, Shapiro clearly breached his fiduciary duty as a trustee of an escrow account when he sent money to someone other than the *seller* — as specified in each of the three agreements he signed and then conceded that he had no control

[7] I note that the SPA specifically provides that "nothing in this clause limits or excludes liability for fraud." CX 1 at § 16(v).

over what that recipient did with the money. This supports the conclusion that Shapiro was involved with a fraud that results in his personal liability for breach of the Escrow Agreement.[8]

D. Did Shapiro breach the Guarantee Agreement? Can it be reasonably concluded that the investment failed?

As set forth above, the Guarantee Agreement, dated December 14, 2020, obligated Shapiro to personally guarantee to Barron the repayment of his investment of $2 million should the investment described in the SPA not succeed. This Agreement was signed six weeks after the SPA and the Escrow Agreement. The reason for this additional agreement is uncontested.

Under both the SPA and the Escrow Agreement, Barron's $2 million could not be released from escrow until the gloves were delivered to MSV, inspected, and approved. *See* CX 1 at § 7(A)(iii); CX 2 at § 1. In an email dated December 7, 2020, Shapiro wrote to Sandiford and Boyle-Hebron of MSV that he could get as "many containers as you want . . . [if] the money is released from Escrow upon receipt of an SGS [inspection] report and bill

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[8] Shapiro would undoubtedly argue Claimants did not bring a claim for breach of the Escrow Agreement. However, as noted earlier, the pleadings may always be conformed to the proof. In the alternative, this breach of the Escrow Agreement can be viewed as further evidence of the fraud perpetrated by Shapiro that makes him personally liable for the breach of the SPA.

of lading as it gets loaded onto trucks *in China*." CX 5 (emphasis added). Before agreeing to release the funds from escrow, Claimants demanded and received Shapiro's "absolute" and "unconditional guarantee" that he would repay the amount of the escrowed funds to Barron "should the investment specified in the PSA [sic] not succeed." CX 10.

As set forth in detail above, the funds were released by Shapiro from his escrow account on December 17, 2020 (three days after the Guarantee Agreement was signed) and January 13, 2021. This was prior to any shipment of goods to MSV (conforming or otherwise). MSV's protection in agreeing to release the funds prior to the receipt of the goods was Shapiro's personal guarantee to repay the money if the investment did not succeed.

Shapiro now argues that despite his absolute, irrevocable, and unconditional guaranty, the agreement is qualified by language found in paragraph 3 stating that "Investor understands that this is not a loan or joint venture, but that it is an investment, subject to all the generally accepted rules and regulations of investments." *Id.* at ¶3. Nowhere does Shapiro cite to any generally accepted rules and regulations of investments. Rather, it appears that what Shapiro meant is that Barron must realize that there is always a risk that an investment will not succeed. Shapiro argues that he had nothing to lose by entering into the Guarantee Agreement because if the investment succeeded Barron would make money, but if the investment failed then Shapiro would not be liable under paragraph 3 of

the Agreement (*i.e.* investment risk). *See* Tr. 369:18-23 (Shapiro).

It is well established that "a court will not construe a guaranty in such a way as to render it meaningless." *Lehman Bros. Holdings, Inc. v. Matt,* 34 A.D.3d 290, 291 (1st Dep't 2006). This is exactly what would happen if I were to accept Shapiro's argument – which is a classic "heads I win; tails you lose." The first paragraph of the Guarantee Agreement clearly states that Shapiro guarantees to repay Barron "should the investment specified in the PSA [sic] not succeed." It is not hard to conclude that this investment did not succeed. The March shipment contained non-conforming goods that were properly rejected.[9] And, for the reasons set forth above, Claimants were not required to accept the June or July shipments (even if conforming), because neither shipment "strictly" adhered to the terms of the SPA, which were never amended in a writing signed by both parties.

Speculative investments are one thing – contractual obligations are another.[10] There was no specu-

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[9] There is another strange fact regarding the March shipment. On the Bill of Lading the shipper is listed as Shanghai Elegant Import & Export Co., Ltd. located in Shanghai, China. This shipper is different than either of the factories to which Glover allegedly sent Barron's money. *See* RX 591.

[10] It is not hard to give examples of investments where an investor takes the risk of losing her money. For example, one might invest in a new business in the hope that it will be successful, but it is not. One might invest in a stock, hoping it goes up in price, but instead it sinks to almost zero. These are

lation here – Respondents signed a contract requiring that Seller supply specified goods under the terms and conditions set forth in the contract. This never happened. Because of that, the investment did not succeed. As Shapiro has not returned the $2 million to Barron within "30 days after it is reasonably concluded that the investment has failed" as required by the Guarantee Agreement," (*id.* at ¶10), Shapiro has breached the Guarantee Agreement.

E. Shapiro's Counterclaims

As set forth above, Shapiro brough several counterclaims against MSV and Barron. All these claims have been dismissed pursuant to pre-hearing Order #2, dated November 20, 2023, for non-payment of fees. Even if the fees had been paid, these counterclaims would all fail for the following reasons. Some of the claims make no sense at all – i.e. the claims for Breach of fiduciary duty, Unjust Enrichment, Conversion and Self-dealing. In no way can MSV or Barron be fiduciaries owing a duty of loyalty to Shapiro. Nor is there any evidence whatsoever that either converted to themselves any goods or funds that belonged to Shapiro. As for the remaining claims of breach of the covenant of good faith and fair dealing and indemnification,

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risks that investors take every day. This is easily distinguishable from a contract for the sale of goods. The only risk to the Buyer in such a contract is that he will get less than he expects when he re-sells the goods he purchased. But there should be no risk that he will not receive the goods that the seller contractually agreed to supply.

Shapiro argues that he was scammed by MSV which claimed (falsely) to be very experienced in the business of dealing with PPE. While this may indeed have been a misrepresentation, it cannot defeat the clear breach of three agreements by Shapiro outlined above. Shapiro chose to enter into those contracts. He also drafted each contract, none of which contained any representations by MSV or Barron. The SPA specifically provides that the SPA supersedes all previous oral or written agreements. *See* CX 1 at § 16(v). Thus, any misrepresentations that may have been made by MSV prior to the execution of the SPA are not actionable.

VIII. DAMAGES

Having found that Paz Global and Shapiro breached the terms of the SPA and that Shapiro also breached the Escrow Agreement and the Guarantee Agreement, the only remaining issue is the amount of damages that should be awarded to Claimants. My conclusions as to damages are set forth in the numbered paragraphs immediately below.

1. MSV and Barron are entitled to an award of damages in the amount of $2 million against Paz Global and Shapiro, jointly and severally.

2. Pre-judgment interest at New York's statutory rate of 9% is also warranted to run from the date of the breach, which I find to be May 19, 2021, when MSV and Barron provided unequivocal written

notice of breach until the date of this award.

3. In addition, AAA Commercial Rule 49(d)(ii) (effective September 1, 2022) provides that "the award of the arbitrator may include an award of attorneys' fees if all parties have requested such an award . . . ." Both parties requested an award of attorneys' fees in their pleadings.

AAA Commercial Rule 49(c) states that in the final award the arbitrator shall assess the fees, expenses and compensation provided for in Rules 55, 56 and 57. Those rules cover administrative fees, expenses, and fees of the arbitrator. Rule 49(c) further states that "[t]he arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate."

Claimants have requested a total of $79,223.66 in attorneys' fees, expenses, and costs. I have carefully reviewed the supporting material for this request submitted by Claimants and find it to be reasonable and appropriate.

As for the costs of this arbitration and the arbitrator's fees, I find that the AAA administrative fees and arbitrators' compensation should be borne 100% by Paz Global and Shapiro, jointly and severally. MSV and Barron have paid 100% of these fees to date. Finally, section 14 of the SPA requires each party to indemnify the other for any loss caused by its gross negligence or fraud, including

any loss incurred as a result of any lawsuit or action (here arbitration).

CONCLUSION

1. Paz Global and Shapiro, jointly and severally, shall pay MSV and/or Mark Barron the sum of $2 million, with pre-judgment interest at New York's statutory rate of 9%, from May 19, 2021, to the date of this Award, and post-judgment interest to run thereafter at New York's statutory rate of 9% until full payment is made.

2. The administrative fees and expenses of the AAA totaling $23,875.00 and the compensation and expenses of the arbitrators totaling $57,240.76 shall be borne jointly and severally by Paz Global and Saadia Shapiro. Therefore, within thirty (30) days of the issuance of this Final Award, Paz Global and Saadia Shapiro shall pay to MSV and/or Mark Barron the sum of $63,290.76 (this is not the total of the two above figures because Respondents paid their share of the Joinder Arbitrator and the initial filing fee for the counterclaim).

3. Paz Global and Shapiro, jointly and shall also pay MSV or Barron for their attorney's fees, and costs in the amount of $79,233.66.

4. The Final Award is in full resolution of all claims and counterclaims submitted to

this arbitration and claims, counterclaims, arguments, or issues not specifically addressed are rejeccted and denied with prejudice.

Dated: June 3, 2024

/s/ SHIRA A. SCHEINDLIN
Hon. Shira A. Scheindlin, Arbitrator

State of New York

ss:

County of New York

I, Shira A. Schendlin, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Final Award.

June 3, 2024
Date

/s/ SHIRA A. SCHEINDLIN
Hon. Shira A. Scheindlin
Arbitrator

[LETTERHEAD AMERICAN ARBITRATION ASSOCIATION
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May 14, 2024

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Case Number: 01-22-0004-8950
MSV Synergy, LLC and Mark Barron
-vs-
Paz Global Ventures, LLC
-vs-
Saadia Shapiro

Dear Counsel:

The hearings are declared closed as of May 14, 2024. The arbitrator shall render the award by June 13, 2024.

Going forward, please direct all communications to the AAA, as direct exchange with the arbitrator has ended.

Sincerely,

/s/ LISA A ROMEO

Lisa A Romeo
Vice President
Direct Dial: (617)695-6037
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cc: Michael Sloan
Adam Kenner, Esq.
Hon. Shira Scheindlin

[LETTERHEAD HELLER, HORROWITZ & FEIT, P.C.]

May 13, 2024

Hon. Shira Scheindlin
Arbitrator

Re: MSV Synergy, LLC and Barron v. Paz Global Ventures, LLC and Shapiro, Case No. 01-22-0004-8950

Dear Judge Scheindlin:

Respondents Saadia Shapiro ("Shapiro") and Paz Global Ventures, LLC ("Paz") respectfully submit this Letter in response to Your Honor's List of "Questions to Be Addressed." As indicated in my earlier email, most of the Questions seek clarification concerning the positions taken by Claimants in their post-hearing submission. For this reason, this Letter will be quite short.

1. *Veil Piercing Claim.* Based on the pre-hearing and post-hearing submissions, we do not believe that Claimants have asserted that Shapiro is liable for any alleged breach of the SPA by Paz solely by virtue of Shapiro's status as a member or controlling person of Paz. The Arbitration Demand (there was no separate Statement of Claim) alleges that "respondent Paz Global Ventures. LLC ('Seller') breached a sales and purchase agreement by failing to deliver to claimant MSV Synergy Energy, LLC ('Buyer') 250,000 boxes of powder free

nitrile medical examination gloves ('the PPE')". and that "Respondent Saadia Shapiro, Esq., breached a guarantee agreement by failing to repay claimant Mark Barron the $2 million he paid on buyer's behalf, for the PPE." In short, Claimants' position was that any personal liability on the part of Shapiro was limited to and arose solely out of the Guaranty.

Nor do we believe that there was any evidence adduced at the hearing to substantiate such an unpled claim; and there was certainly no application at the close of the hearing in the nature of amending the pleadings" to conform to the evidence. Indeed, there is no mention of such a claim in the Claimants' Initial Disclosure stated, dated August 18, 2023, the Claimants' Prehearing Memorandum, dated February 26, 2024, in any of the Witness Statements, in the Post-Hearing Brief, dated April 9. 2024, or in any of the hearing testimony.

The only reason that we mentioned veil piercing in our proposed Findings of Fact and Conclusions of Law ("Proposed Findings") was that the parties had agreed to "one shot briefing", with no replies, and we wanted, out of an abundance of caution, to make sure that we were not blindsided with such a claim in Claimant's submission with no opportunity to respond.

2. *Conflicting Language in Guaranty.* During the hearing, Shapiro testified as to his understanding of the rather unusual (but plainly deliberately inserted) language in the Guaranty concerning the acknowledgment by Mr. Barron as obligee that the obligations of Shapiro as guarantor were "subject to all the generality accepted rules and regulations of investments" and would in any event only be triggered "if the investment failed." While we believe, of course, that Shapiro's testimony in this regard was credible and should be credited by the Arbitrator, we believe that this issue can be resolved in our favor based upon the language of the written instrument. In this regard, it is undisputed (based on the testimony of Claimant's principals) that the Guaranty was carefully reviewed by the Claimants' principals and their advisors, and that nobody held a gun to their heads to sign. Indeed, they testified that they fully understood all of the provisions.

   The only way to read the two clauses is that their insertion was plainly intended to modify the "absolute and unconditional" language in the first part of the document by explicitly limiting Shapiro's liability as guarantor to situations where (i) "the investment failed" and (ii) such failure was the result of something other than the gen-

eral risks associated with investments, to wit, some affirmative wrongdoing on the part of Shapiro beyond a failure on the part of Paz to deliver the Gloves. Otherwise, and if the Guaranty is read as simply an absolute guaranty of performance of the SPA by Shapiro—irrespective of any "fault" on his part—those clauses are rendered meaningless, in violation of the fundamental canon of construction that all provisions of a contract must be given meaning and significance. When taken together with the very broad force majeure clause in the SPA, it is fairly clear that the parties' intent—as evidenced by the written instruments they negotiated and signed—was that Shapiro would not have liability under the circumstances of this case.

Moreover, even if it were arguable and reasonable to read the Guaranty as imposing "absolute and unconditional" liability upon Shapiro notwithstanding the "investment" language, the fundamental principle that a guarantee obligation is to be construed narrowly and in favor of the guarantor would, we respectfully submit, require the Arbitrator, in choosing between two alternative reasonable constructions of the instrument, to resolve the matter in favor of Shapiro.

In this regard, it is important to recognize that the "trigger" for liability under the

Guaranty is not a simple breach of the SPA by Paz. Rather, it is something different—a "failure" of "the investment" made by Mr. Barron. Why is this important? Because it is entirely possible for the Arbitrator to find that (i) the SPA was breached because the Gloves were not delivered in a timely fashion, but (ii) the "investment" of $ 2 million did not "fail", since it is undisputed that in June and July 2021, seven containers of presumptively conforming Gloves (there is no evidence to the contrary) were made available to MSV and were rejected by Claimants for no apparent reason. *3. Notice of Breach.* We really don't have anything to add to the discussion in our Proposed Findings. According to Claimants, Paz allegedly breached its contractual obligations under the SPA on various alternative dates, the latest of which was March 2021. We explained that one provision of the SPA required written notice of the breach within fourteen days and another one requires twenty days to cure any breach and that neither of these requirements were satisfied here by the May 19, 2021 Letter from MSV to Paz and Shapiro (CX14). Under applicable law, as set forth in our pre-hearing Memorandum and Proposed Findings, courts treat these provisions pretty seriously, and there is no reason why they should not be enforced in this case.

3. *25 Mile Limit.* The evidence is undisputed that at no time prior to the filing of the federal lawsuit by MSV (shortly before the arbitration was filed) did MSV or any of its principals ever raise any issue concerning the location of the delivered Gloves. And the testimony was also fairly clear (notwithstanding Ms. Boyle-Hebron's rather unconvincing and self-serving statement that it was an issue that was "discussed") that the 25- mile limit was not a subject of discussion internally among the principals of MSV. Mr. Sandiford testified that it was never spoken about.

   Notwithstanding Ms. Boyle-Hebron's testimony, the undisputed facts show that as soon as MSV learned of the California shipment of Gloves, it sent Mr. Sandiford to California to inspect the Gloves. And there was no indication that MSV rejected the June and July shipments of Gloves on the grounds that the product was delivered to California, and not New York/New Jersey. Rather, according to Mr. Barron, the only reason the June shipment was rejected was because it was too late for him to make the money he had anticipated. Given the evidence in the record, a clearer case of waiver by conduct and failure to object could hardly be imagined.

4. *Did the Transaction "Fail."* We do not believe that the "transaction" can be

deemed to have "failed" if the same number of Gloves contemplated by the SPA were made available to MSV in June and July 2021. Not to put too fine a point on it, the purpose of the "investment" of $2 million was to obtain approximately 250,000 boxes of Gloves, and that is exactly what the evidence shows was made available to MSV.

The June and July shipments of seven containers of presumptively conforming Gloves thus has significance for two reasons. One, it shows that, irrespective of the niceties of the SPA and Paz's obligations thereunder. the underlying "transaction" (getting Gloves) did not "fail." And two, it also shows, in our view, compliance with the terms of the SPA because, given the delays engendered by the Pandemic and the broad force majeure clause, the delivery of the product in June and July was not unreasonable. Furthermore, if, as we contend, the May 19 notice was a nullity because it was sent more than fourteen days beyond the date of the breach and did not provide for a cure opportunity, it cannon serve as a "trigger" for the time for performance.

If Claimants cannot show that the underlying SPA was breached by Paz, the claim for secondary liability against Shapiro necessarily falls. But at the risk of repetition, we wish to emphasize that such underlying breach is a necessary but not sufficient

condition for imposing liability upon Shapiro. Thus, as explained above, even if there was a breach, Shapiro's liability under the Guaranty also depends upon a showing that the underlying "investment" had "failed". which was not the case here by virtue of the June and July shipments of seven containers.

5. *Reasonable Time for Performance Under the SPA.* The definition of a "reasonable time" for performance, like any determination of "reasonableness" in any context, must be based on all ofthe surrounding circumstances. But we don't even think that the Arbitrator has to reach the issue because, as stated in the Proposed Findings, it is Claimants' burden to establish all of the elements of its contract claim—including that the Gloves were not delivered within a "reasonable time"—and they presented absolutely no evidence on that issue in the arbitration sufficient to sustain their burden. As such, Claimants have failed to make out a *prima facie* case on the breach of contract claim.

   If the Arbitrator nevertheless reaches the substantive issue of a "reasonable time", the "accrual date" for determining reasonableness must be the date that the funds were transferred to the Factories in China and Thailand, which was mid-December 2020, which is exactly what Mr. Shapiro

said in his testimony. It cannot be the date that the SPA was signed, because the evidence established that until money is paid to the Factories, no actual work is going to begin.

Furthermore, the determination of a "reasonable time" must, of course, also consider the force majeure clause in the SPA and the enormous supply chain delays resulting from the Pandemic, all of which were documented in the materials presented in our Proposed Findings and were also discussed in Mr. Shapiro's hearing testimony.

As to the judicial notice issue, while we are not aware of any applicable AAA rules, we note that Rule 201 of the Federal Rules of Evidence provides that "a court may take judicial notice, whether requested or not" (Rule 201(c)), "a court shall take judicial notice if requested by a party and supplied with the necessary information" (Rule 201(d)), and "judicial notice may be taken at any stage of the proceeding." (Rule 201(f)). It has been held that, under Rule 201(f), judicial notice is permissible on appeal, even if the matters sought to be judicially noticed had not been raised below. *Advisory Committee Notes to FRE 201; see, e.g., United States v. Jones,* 574 F. 3d 546, n. 2 (8th Cir. 2009); *United States v. Behmanshah,* 49 F. 3d 372, n. 2 (3d Cir. 2002); *in re Indian Palms Assoc., Ltd.,* 61

F.3d 197. 1205–06 (3d Cir. 1995); *Wells v. City & County of Denver.* 257 F. 3d 1132, 1151-52 (10th Cir. 2001). Indeed, it has been recognized that a trial court may take judicial notice of matters through a post-trial application by a litigant to do so. *See, e.g., in re Rhoads,* 572 B.R. 905, 911 (Bk., N.D. Ill. 2017). *Compare Kirola v. City and County of San Francisco,* 74 F. Supp. 3d 1187. n. 2 (N. D. Cal.2014) (denying post-trial application to take judicial notice of matters because not relevant to disposition of case).

We are not sure what it means to "authenticate" a newspaper article from the *Washington Post* or another reputable media source which is available on the Internet. But as noted in the Proposed Findings, there is authority supporting the taking of judicial notice of such facts. *See also Ritter v. Hughes Aircraft Co.,* 58 F. 3d 454, 458 (9th Cir. 1995); *Holloway v. City of Virginia,* 531 F. Supp. 3d 1015,1099 (E.D. Va. 2021); *Padilla v. City of Gallup,* 2006 WL 8444138 at *3 (D.N.M. 2006); *Associated Gen. Contractors of Am. v. City of Columbus,* 936 F. Supp. 1363, 1425 (S.D. Ohio 1996) (taking judicial notice of facts contained in newspaper articles).

Moreover, even if the Arbitrator does not believe that judicial notice of the articles is not appropriate, we presented reports from

a government agency describing significant delays in delivery of goods from China during the relevant period. and there is no serious dispute that such reports are an appropriate subject of judicial notice. *Greene v. City of New York,* 2024 WL 1308434, n. 12 (S.D.N.Y. 2024); *BT Produce v. Robert A. Johnson Sales, Inc.,* 354 F. Supp. 2d 284, n. 2 (S.D.N.Y. 2004); *Paskar v. City of New York,* 3 F. Supp. 3d 129, 133-34 (S.D.N.Y. 2014). These materials substantiate Mr. Shapiro's testimony that during the Pandemic deliveries could take up to six months.[1]

As to the "reset" question, we need look no further than the March 10, 2021 Letter (RX 100), which referred to the $38,400 to be paid to MSV by Paz as compensation for past delays (which full payment was reflected in Mr. Sandiford's March 17, 2021 email (RX 113). and which contemplated a new schedule for shipments of Gloves by stating that "upon completion of this particular transaction [the payment of $38,400] both entities [Paz and MSV] may revisit the pricing structure and terms accordingly."

[1] We submit herewith some additional references from publicly available sources which confirm the delays in the supply chain during the Pandemic and respectfully request that, in addition to the authorities cited in the Proposed Findings, the Arbitrator take judicial notice of these additional materials as well.

Respectfully submitted,

/s/

Stuart A. Blander

SAB:cfd

cc: Attorneys for Claimants (via email)

[LETTERHEAD BLUE SILK CONSULTING
GLOBAL SUPPLY CHAINS]

Reference Sites for Delays in Production and Shipping of Nitrile Gloves During the Covid19 Pandemic

https://crsreports.congress.gov/product/pdf/R/R46304

Measures to contain the COVID-19 outbreak significantly curtailed global transportation links, preventing the transport of many products and manufacturing inputs. Passenger air traffic has slowed significantly, taking offline significant air cargo capacity for microelectronics and other products that ship by air. Container shipments also have been constrained by a backlog and dependence on domestic trucking and rall transportation, as well as on the ability of countries to staff port operations. U.S. airlines started suspending flights to China in late January 2020 and have suspended other routes as COVID-19 has spread globally. Container shipping from China faced serious logjams because of shortages of workers and trucking constraints. These logjams affected both U.S. imports to and exports from China.

China's nationalization efforts, while understandable as part of its efforts to address an internal health crisis, may have denied the United States and other countries that

depend on open and free markets for their health care supply chains timely access to critical medical supplies. On February 3, 2020, China's Ministry of Commerce directed its bureaucracy, local governments and industry to secure critical technology, medical supplies, and medical related raw material inputs from the global market, a situation that likely further exacerbated supply shortages in the United States and other markets.

https://defendersafety.com/blogs/defender-edu/navigating-the-nitrile-gloves-gloves-shortage

Demand for nitrile (preferred over latex gloves) spiked in the early part of the pandemic, but continued throughout 2021 because these gloves are used in many medical and industrial settings beyond hospitals. 99 percent of nitrile gloves are produced in China and Malaysia. Large producers in China shut down their factories several times in 2020 and 2021. US Health and Human Services (HHS) prefers to source nitrile gloves in the US, one North American supplier estimated that it can take four to six months to add a new nitrile gloves production line and a minimum $2 million investment.

http://www.watsongloves.com/covid-19-effects-and-outlook-on-the-disposable-gloves-supply-chain-webinar-recap/

(2020) – Supply Chain Issues on Nitrile Gloves

1. Raw materials shortage due to increase demand

This demand increase causes serious backlog from a lot of manufacturers. Top producers are seeing as high as an 180% increase in orders, and factories are all at capacity. Due to the fear of limited supply, lead time has increased from 40 days to about 400 days in some cases from the time you place your order. The surge in demand has overwhelmed the available supply, which has caused bidding wars between the manufacturers for products and raw materials.

2. Export/government regulations

Countries that have disposable glove manufacturers (Malaysia, Thailand, Vietnam, Indonesia, and China) are limiting what's being shipped out so they can handle their domestic needs with products, such as disposable gloves.

Greater government control of distribution can be seen with China. There were some early challenges in China during COVID-19 with fraudulent products that didn't meet quality requirements being shipped out, such as exam-grade gloves, N-95 masks, etc. As a

result, China ramped up inspections and implemented additional requirements. This inevitably slows down the release of products from manufacturers. With an increase in inspections when products leave the factory or the port now, products are expected to be delayed until what's being shipped out is inspected and meets the new standards.

3. Limitations on labor

The lockdown has resulted in movement restriction orders and movement control orders, which is making factories struggle to get skilled workers to meet the demand. These government orders have impacted all workers involved in the supply chain — crew on ocean freighters needed to move the product, equipment maintenance, etc.

4. Factory closures

Chinese New Year/Lunar New Year occurred in the beginning of the year just as COVID-19 was unravelling in China and other manufacturing countries. Typically during this time every year, you would expect a 30% reduction in supply availability in China, as workers would travel back home to their home region. However, with COVID-19, the entire country was mostly on lockdown during this time (January-February). This meant workers couldn't leave home and go back to work. As a result, factories were being shut down for several months, which in turn, resulted in a

huge backlog of orders, as orders are now booked out well into 2021.

5. Price instability

With COVID-19 shaking up the entire supply chain, price instability is an inevitable consequence. Raw material prices are fluctuating, such as liquid NBR, due to a bottleneck in production. Several factories producing raw materials also have scheduled downtime to service their equipment, which usually runs for 45 days or more. This significantly reduces the amount of raw materials, such as liquid nitrile, on the market. This puts pressure on other suppliers, which are already running at full capacity.

https://www.unicef.org/supply/stories/covid-19-impact-assessment-and-outlook-personal-protective-equipment

(2020) – Supply availability has been hampered by a number of issues, including export and travel restrictions by some producing countries, and lockdowns that have forced suppliers to (temporarily) shut down.

https://www.nbcnews.com/politics/politics-news/trump-admin-woefully-behind-stockpiling-medical-gloves-covid-19-surges-n1245298

The global demand for nitrile gloves reached 585 billion in 2020, according to the Health Industry Distributors Association, but manufacturers are only capable of producing 370

billion at current levels — a nearly 40 percent shortfall.

https://www.abelwomack.com/wp-content/uploads/MMH_ResearchReport_US2021.pdf

Ever since it emerged in March 2020 and rapidly transformed into a global pandemic, COVID-19 has had numerous impacts on order management, fulfillment and distribution processes across all sectors. The turn of the calendar to 2021 didn't provide much relief for organizations whose supply chains were severely impacted both at the onset of the pandemic and as it encompassed much of the world.

https://iata.org/en/iata-repository/publications/economic-reports/uneven-recovery-trends-in-air-cargo-traffic-and-capacity/

After nearly three years of the Covid-19 pandemic, in 2022, the shares of international cargo tonne kilometers (CTKs) flown by dedicated freighters (64%) and passenger aircraft (30%) had still not returned to their pre-crisis balanced proportions.

https://www.latimes.com/world-nation/story/2020-04-10/china-beijing-supply-world-coronavirus-fight-quality-control

(2020) – Beijing has tightened export standards in recent days, including quality checks at customs and requiring domestic certifica-

tion as well as foreign licenses for medical products shipped abroad. Previously, exported medical products only had to have the certifications in receiving countries, such as the European Union's CE certification, which could be easily counterfeited in China.

https://members.asicentral.com/news/newsletters/promogram/april-2020/new-china-rules-delay-ppe-exports/

(2020) – China's new restrictions on exports of medical supplies and personal protective equipment (PPE) are causing bottlenecks that are delaying getting the products to the U.S. at a time when they're sorely needed amid the country's coronavirus pandemic. China's government enacted policies that officials there say are intended to assure that medical product exports are quality and meet standards, while also ensuring that necessary items China needs for its coronavirus fight aren't sent abroad. Delays tied to the new regulations appear to be occurring mainly with PPE litems that are specifically classified as medical grade/for medical use. Chinese customs is required to do stricter paperwork reviews for nearly all PPE shipments.

[LETTERHEAD BLUE SILK CONSULTING
GLOBAL SUPPLY CHAINS]

Rosemary Coates, President
www.BlueSilkConsulting.com

Order Fulfillment Cycle Times — China to the U.S.

I am an experienced global supply chain expert, with deep expertise in Chinese manufacturing and logistics, and the author of "*42 Rules for Sourcing and Manufacturing in China.*" I am also a Licensed U.S. Customs Broker. MY CV is attached to this report.

Based on my experience before and during the pandemic, the following process and time frames depict what normally happens in the order fulfillment cycle during ordinary times and during the COVID-19 pandemic. The pandemic was a black-swan event that disrupted supply chains from 2020 through today, causing backlogs, supply chain disruptions, rate hikes, and process changes that forever altered global supply chains.

Ordering Process from China

Ordering products or raw materials begins with a forecasted demand and/or a purchase order from a customer. The supplier or intermediary then identifies a manufacturer somewhere in the world, that is offering to make the products. If the manufactur-

er is qualified, an order is placed and production is planned. Depending on the difficulty in locating a manufacturer, this process can take several weeks.

During the Covid-19 Pamdemic

Demand for all kinds of PPE during the pandemic skyrocketed. Manufacturers in China (where most PPE was traditionally sourced) were overwhelmed with orders. New manufacturers of gloves and other PPE started producing to meet the demand and profit from the opportunity. However, these old and new suppliers could not keep up with demand and often delayed the processing by weeks or months.

Qualifying a Supplier Under FDA Regulations

The FDA regulates nitrile gloves that are used in medical settings and classifies them as Class 1 medical devices. To sell nitrile gloves in the U.S. for medical use, the product must be certified by the FDA. This certification is typically done by FDA inspectors on-site at the manufacturing facility, prior to exporting from China. Without this certification, nitrile gloves would be stopped by U.S. Customs and rejected for import into the U.S. FDA onsite inspections often take months to schedule, delaying shipments from the factory.

During the Covid-19 Pamdemic

Travel to and from China during the pandemic was either impossible or required weeks of quarantine

for travelers. FDA inspectors could not travel to China to certify new factories for the production of nitrile gloves for several months. This resulted in months of delay at manufacturers and the inability to ship any products to the U.S. until certified.

At the Factory

A typical production schedule at a factory is planned 3-6 months in advance. This means that new orders must wait until there is an opening in the schedule. Sometimes it is possible to pay a premium and get someone else's order bumped to fit the premium order in the schedule earlier.

During the Covid-19 Pamdemic

Production of nitrile gloves and other PPE during the pandemic was an emergency situation with extraordinarily high demand. Most customers were willing to pay premiums for expedited production, but every order was high priority. Factories that were FDA-approved often had production scheduling delays of 6-9 months.

Shipping for Export

Once products are made and packaged for shipment, arrangements are made to ship via ocean container or air freight. These arrangements include preparing documents for the export shipment (packing list, bill of lading, FDA certificate, Country of Origin certificate, export license), making the trucking arrangements to the port of exit,

and make the transport booking via sea or air. Shipments traveling via ocean freight must wait until space is available and the ship has a sailing date. Preparing documents, arranging trucking to the port, and booking a shipment usually takes 5-7 days.

During the Covid-19 Pamdemic

Because of the extreme volume of products moving from China to the U.S. during the pandemic, it was difficult to find trucks available to haul containers to the port. Once at the port, queues to drop containers sometimes stretched for days. All outbound ports from China were congested and backlogged. Many shipping lines reduced their routes and ports of call during the pandemic, further restricting available capacity and increasing prices during the spring and summer of 2020. It took months to work off the backlog, delaying shipments leaving China.

Chinese Customs Clearance

Chinese Customs and Export Administration is responsible for checking cargo being exported from China. Prior to export, Chinese Customs reviews, stamps, and signs export documentation. This process normally takes a day or two.

During the Covid-19 Pamdemic

Because of the world outrage about counterfeit PPE coming from China in the spring and summer of 2020, Chinese Customs started physically

inspecting every PPE shipment leaving the country. This meant that containers had to be opened and products inspected before Chinese Customs would sign off on export documents. This caused at least one week's delay in export shipments at the Chinese ports.

International Transportation

Ocean freight shipments from China to the U.S. west coast usually take 4-5 weeks of transit time. Once shipments arrive in the U.S. they must be unloaded from the vessel, clear U.S. Customs, and transported via truck or rail to the shipment's destination.

During the Covid-19 Pamdemic

Not only was the U.S. buying enormous amounts of PPE during the pandemic, but people who were locked down at home were buying all kinds of merchandise including laptop computers, small electronics, furniture, and small appliances — all coming from China. So much merchandise was moving from Asia to the U.S. during the pandemic, that the U.S. ports could not handle the high incoming volume. Ships were stuck waiting to unload across all of the West Coast ports. The Port of Los Angeles/ Long Beach and the Port of Oakland were backlogged for container ship arrivals for 3-4 weeks.

Importing into the U.S.

Once goods arrive in the U.S., they must clear U.S. customs before entering the commerce of the U.S. This process is normally facilitated by a U.S. Customs Broker who completes an electronic document filing and executes the payment of import tariffs. This is a routine process that takes 1-2 days. The Customs Broker then makes delivery arrangements for the shipment to travel to its destination.

During the Covid-19 Pamdemic

Because of counterfeit PPE goods being shipped to the U.S. and the threat these goods posed to Americans, U.S. Customs began inspecting every PPE shipment arriving by sea and air. These additional inspections caused further backlogs at the ports and additional delays of a week or more

Summary

Order fulfillment times from Chinese manufacturers to the U.S. via ocean freight typically take 2-3 months depending on the factory schedule and whether or not the factory has pre-made inventory on hand. Booking and export processes from China are routine, adding only a few days to the fulfillment time. Processing through U.S. Customs is done electronically with only occasional physical inspections.

During the Covid-19 Pamdemic

During the pandemic years 2020-2021, nothing was routine. FDA-authorized factories were backlogged for months and shipping was difficult and often delayed. Chinese and U.S. Customs further delayed the journey. Order fulfillment processing time stretched to 6-9 months for PPE including nitrile gloves.

Respectfully Submitted,

/s/ *Rosemary Coates*

Silicon Valley, CA

March 29, 2024

[LETTERHEARD BLUE SILK CONSULTING
GLOBAL SUPPLY CHAINS]

[PHOTO] Rosemary Coates
PO Box 760, Los Gatos, CA 95031
408-605-8867
rcoates@bluesilkconsultng.com

Summary

Ms. Coates is the President of Blue Silk Consulting. She is a seasoned executive with an MBA and 35 years of experience in Supply Chain Management, Manufacturing, Project Management, and ERP Systems Implementation Consulting.

Ms. Coates has consulted with global and domestic clients on systems and processes. She has considerable international experience and has worked for extended periods in Asia and Europe.

She has extensive knowledge and experience in manufacturing and outsourcing in China. She has authored five supply chain books (including an Amazon.com Best Seller book): ***42 Rules for Sourcing and Manufacturing in China; Negotiation Blueprinting for Buyers; 42 Rules for Superior Field Service; Reshoring Guidebook; and Legal Blacksmith.***

Legal Cases

As an Expert Witness, Ms. Coates has:

- Assisted attorneys in their understanding of relevant supply chain operations and practices in sourcing, logistics, distribution, manufacturing, inventory and import/export trade compliance, and systems implementations
- Written expert reports and research briefs
- Testified in depositions, arbitrations, and trials
- Opined on:
  - China Sourcing and Manufacturing
  - Counterfeit Imports
  - PPE manufacturing, acquisition, and distribution during the Covid19 pandemic
  - Chinese Products: electronics, toys, apparel, plastics, automotive
  - Global Manufacturing Operations, Contract Manufacturing, CMS, EMS
  - Procurement Processes and Contracts
  - Transportation and Logistics, 3PLs and Freight Forwarders, Freight Shipping, Warehousing
  - Maritime Operations and Processes
  - Outsourcing – Business Process and Technology

- Forecasting and Planning
- Import/Export Management
- Import Tariffs
- Securities related to Supply Chain
- Distribution Channels and Compensation
- Supply Contracts
- Inventory Tax
- Eminent Domain
- Project Management for Enterprise Software ERP Systems – SAP, Oracle, Netsuite, and others including Trade Compliance in Cross-Border Shipping
- ERP Software Consulting Implementation Failures and Runaway Projects

Representative Business Accomplishments

- As the **President and Founder of Blue Silk Consulting (Silicon Valley, CA)**, is responsible for selling and delivering Supply Chain, Project Management and Business Process Reengineering consulting. Ms. Coates is an expert in sourcing and manufacturing in China and in global supply chain matters including cross-border shipments and software. Ms. Coates is also the **Executive Director of the Reshoring Institute**, a 501c3 non-profit research organi-

zation assisting companies with global manufacturing strategies

- As **Senior Director, SAP America (Palo Alto, CA)**, was responsible for managing business consulting and implementation teams for SAP's Fortune Global 50 accounts. Member of evaluation team for failed SAP implementations, helping to get projects back on track. Clients included Oil & Gas, Aerospace and Defense, High Technology, Industrial Products and Retail.
- As the **National Supply Chain Practice Leader at Answerthink Consulting Group (Miami, FL)**, initiated and grew the Supply Chain practice to include management consulting solutions and ERP software integration. Supply Chain included Forecasting and Planning, Manufacturing, Inventory Management, Warehousing, Import / Export Trade Management, Logistics and Transportation.
- As **Senior Manager at KPMG Peat Marwick (Chicago, IL)**, led the US West Coast National Logistics Practice. Delivered consulting engagements throughout the world, including a 5-month project in Seoul, Korea. She was a member of the Global Supply Chain SWAT team, developing approaches and addressing the needs of global 500 clients.
- As a **Regional Logistics Manager at Hewlett-Packard (Palo Alto, CA)**, was responsible for internal Global Supply Chain

and Logistics consulting at 17 HP divisions. Acted as a representative for corporate policies and programs as well as a project leader and coach for innovative projects in supply chain, channel distribution and trade compliance.

- As **Materials and Transportation Manager at Cubic Corporation (San Diego, CA)**, was responsible for managing production inventories, Shipping and Receiving and the transportation of inbound raw materials and finished products shipped to commercial and Department of Defense customers.

Education

- MBA with concentration in Finance and Operations Management from University of San Diego Knauss Graduate School of Business
- Bachelor of Science in Business Logistics from Arizona State University WP Carey School of Business

Credentials, Certifications

Licensed United States Customs Broker and an **Area Response Designee**, US Department of Transportation and Federal Emergency Management Agency.

Credentialed **Adjunct Professor of Business**, at California Colleges and Universities. Has taught:

- Global Supply Chain Strategies and Architectures

- Management and Supervision
- Supply Chain Management
- Logistics and Distribution
- Statistical Analysis and Decision Making
- World Class Manufacturing
- International Business Management
- Importing and Exporting

Ms. Coates currently teaches Supply Chain Architecture at the **University of California Berkeley**. She has lectured at the **Drucker School of Management at Claremont University, the University of San Diego, Arizona State University, Lehigh University, Purdue University**, and **St. Louis University**. Additionally, she has taught Management and Supply Chain courses on-site at many Silicon Valley companies. She also presents public workshops on Sourcing and Manufacturing in China (in the US and Asia), Reshoring, and Strategic Negotiations for Industrial Buyers.

Ms. Coates is a Board Member at the **University of San Diego Supply Chain Institute**. She is active in the **Council of Supply Chain Management Professionals**, the **Institute for Supply Management**. She frequently speaks at conferences and seminars. She is a member of **Asia Society, IEEE of Silicon Valley** and a Past Board Member of **Asia America Management Association** of Silicon Valley. She is an active coach, men-

tor and blogger on **Supply Chain Management Review**, and **Blue Silk Consulting.**

Ms. Coates is a member of **Reuter's Insight**, a Community of Experts; and **Gerson Lehrman Group** Experts where she consults on Supply Chain matters.

Published and Presented

Ms. Coates has published and presented at many forums and for print medium.

- Book: ***42 Rules for Sourcing and Manufacturing in China*** — Best Seller at *www.Amazon.com*
- Book: ***Negotiation Blueprinting for Buyers*** — *available at www.Amazon.com*
- Book: ***42 Rules for Superior Field Service*** *available at www.Amazon.com*
- Book: ***The Reshoring Guidebook*** — *available at www.Amazon.com*
- Book: ***Legal Blacksmith-How To Avoid and Defend Supply Chain Disputes*** — *available at www.Amazon.com*

Selected Presentations and Articles

- North American Development Bank, annual conference San Antonio, TX, August 2023 "Cross-border Commerce"

- Food Logistics Magazine April 2023 *"Now Is the Time to Rethink and Reconstruct Global Supply Chain Strategies"*
- Wells Fargo Bank and MIT – Keynote. Boston, MA, Mar 2023 *"Nearshoring/ Reshoring – The Key To Resiliency in Global Manufacturing°*
- Bank of America, Virtual Conference, March 2023 *"Reshoring – Investing in America"*
- Institute for Supply Management, Dallas, TX, May 2023 *"Leaving China – It's Harder Than You Think"*
- U.S. District Export Council San Diego and Imperial Counties, March, 2022 keynote *"Reshoring and Nearshoring"*
- National Fluid Power Association keynote, Phoenix, AZ February, 2022 *"The Reshoring Movement – The Time Is Now"*
- Asian-American Society & DingDing TV October 2021 *"Global Supply Chain Gridlock"*
- Internet Retailers Conference Salt Lake City, Utah, October 2021 *"Global Supply Chains in Chaos"*
- Aluminum Extruders Conference, Sept 2021 *"The New Dawn of Manufacturing"*
- Manufacturer's Alliance for Productivity and Innovation (MAPI) June 2021

"Rethinking Reshoring During Supply Chain Disruptions"

- MACNY, The Manufacturers Association & The Manufacturers Alliance of New York State, April 2021 "The *Case for Reshoring"*
- Powder & Bulk Solids Conference, February 2021 *"Building Advanced Manufacturing in America – Time to Reshore?"*
- University of San Diego Webcast June 2020 *"Reshoring – The Hottest Trend in Business"*
- International Housewares Show, April 2020 Webcast *"Are There Counterfeits In Your Supply Chain?"*
- Purdue University, February 2020 – Keynote *"It's Time To Bring Manufacturing Back"*
- Manufacturing & Microsoft Technology Conference, May, 2021 keynote "What Is Your Global Manufacturing Strategy? Is It Time To Reshore?"
- Lexology Webinar, March, 2021 "Counterfeiting: Understanding the Landscape and Mitigating Revenue Erosion"
- Utica Downstream Oil & Gas Conference Feb, 2021 Keynote "Reshoring in American Oil & Gas"
- Manufacturing Leadership Journal – National Association of Manufacturers,

Feb, 2021 "Leaving China – It's Not That Easy"

- London School of Economics Business Review, June 11, 2020 "Reshoring In the Age of Coronavirus: Beware of Hurdles Leaving China"
- Purdue University Lafayette, Indiana, Feb, 2020 Keynote "It's Time To Bring Manufacturing Back To America"
- Lehigh University Center for Supply Chain Research, Bethlehem, PA, Nov, 2019 "It's Time Evaluate Your Global Manufacturing Strategy"
- Industry of Things World USA, Boston, MA Nov, 2019 "It's Time To Bring Manufacturing Back To America"
- IEEE and Consultants Network of Silicon Valley Oct, 2019 "How Counterfeits Can Be Found and Eliminated"
- WESTEC Sept, 2019 "The New Dawn of American Manufacturing"
- ALMA International June, 2019 *"Global Trade Wars – Be Prepared"*
- Association of Manufacturers Bay Area Summit April 2019 – Keynote "Measuring Your Total Cost – How Can Automation Make U.S. Manufacturing Competitive?"
- Aerotech Americas, March 2019 – Keynote *"What Is Your Import Tariff Strategy?"*

- Robotics Business Review January, 2019 "4 Considerations for Western Companies That Want to Leave China"
- Apparel Magazine September, 2018 "What's Your Apparel and Footwear Tariff Strategy?"
- CEOWORLD Magazine – September, 2018 "What's Your Import Tariff Strategy?"
- Supply Chain Executive Roundtable, San Jose, CA, September, 2018 *"Tariffs and Taxes – What's Next for Manufacturing?"*
- Logistics Management Magazine – August 1, 2018 "Cargo Insurance: Protecting Against Risk"
- Supply Chain Executive Roundtable, San Jose, CA, September, 2018 *"Tariffs and Taxes – What's Next for Manufacturing?"*
- Apparel Magazine—September 11, 2018 *"What's Your Apparel and Footwear Tariff Strategy?"*
- Logistics Management Magazine —August 1, 2018 *"Cargo Insurance: Protecting against risk"*
- Council of Supply Chain Management, September, 2018 "What's Next for Global Supply Chain?" Predictions Panel
- World Congress Contract Management 2018, Cleveland, OH, July 2018 *"Avoiding,*

Defending, and Managing High-Stakes Supply Chain Disputes"

- 2018 SVCTBA Smart City Conference, Silicon Valley, CA. May, 2018 Keynote Address *"Global Manufacturing Strategy/ Industry 4.0"*
- IEEE of Silicon Valley, April 2018, San Jose, CA, April 2018, "Protecting Your IP in Global Manufacturing"
- Convergence 2018, St. Louis, CA, March 2018, Keynote Address: "The Past, Present and Future of the Global Supply Chains"
- Oracle Users' Conference, San Jose, CA, Jan 2018, Keynote Address: "Manufacturing 4.0 – It's Time to Bring Manufacturing Back to America"
- Government Contract Management Symposium, Arlington, VA, Dec, 2017, Keynote Address: "Avoiding, Defending, and Managing High Stakes Supply Chain Disputes"
- American Manufacturing Strategies Summit, San Diego, CA, Oct, 2017: Keynote Address: "It's Time To Bring Manufacturing Back to America"
- Retail Global, Las Vegas, NV, Sept, 2017, Keynote Address: *"Time To Bring Manufacturing Back To America"*

- MD&M East, New York, NY, June 2017, Keynote Address: *"How To Navigate Reshoring"*
- Texas Economic Development Council 2017 Mid-Year Conference, Dallas, TX, June 2017, Keynote Address: *"How Changes in NAFTA Will Affect Manufacturing in America"*
- CSCMP San Francisco Round Table, San Mateo, CA, May, 2017, Presentation: *"All About Automation in Reshoring Manufacturing"*
- Molding 2017, Charlotte, NC, April, 2017, Keynote Address: *"It's Time To Bring Manufacturing Back To America"*
- NextFlex Flexible Hybrid Manufacturing institute, San Jose, CA, March, 2017, Keynote Address: *"Case Studies In Reshoring"*
- Peter Drucker Business School- Claremont Graduate University, Claremont, CA, March, 2017, *"Global Manufacturing Strategy"*
- ALMA International Symposium & Expo, Las Vegas, NV, January, 2017, Keynote Address: *"It's Time To Bring Manufacturing Back To America"*
- Brownsville Economic Development Council, Brownsville, TX, December 2016,

Keynote Address: *"The Urgent Need To Reshore – Why America Must Rebuild'*

- AWMI Annual Conference, Orlando, FL, November, 2016 *"The Urgent Need to Reshore Manufacturing"*
- The Assembly Show, Chicago, IL, October, 2016 *"The Urgent Need to Reshore Manufacturing"*
- Emerging and Frontier Markets Association, Washington DC, October, 2016 *"Legal Blacksmith – How to Avoid and Defend Supply Chain Disputes"*
- St. Louis Economic Development Council, St. Louis, MO, October, 2016 Keynote Address: *"The Urgent Need to Reshore Manufacturing"*
- Supply Chain Tech Conference, Chicago, IL June, 2016 *"Legal Blacksmith – How to Avoid and Defend Supply Chain Disputes"*
- Manufacturers' Summit of the Inland Empire, Ontario, CA, April, 2016, Keynote Address: "The *Urgent Need to Reshore"*

Ms. Coates writes a monthly column for **Supply Chain Management Review** *https://www.scmr.com/*

She is the host of the Podcast **"The Frictionless Supply Chain"** *https://bluesilkconsulting.com/podcasts/*

She is also the host of Freightwaves TV show **"Rethink Reshoring"** *https://tv.freightwaves.com/details/35535*

From: Shira A. Scheindlin

To: Kevin A. Fritz; Stuart A. Blander; Saadia Shapiro

Cc: AAA Lisa Romeo

Subject: MSV

Date: Friday, March 8, 2024 9:02:57 AM

Dear Counsel, I hope you conferred yesterday as agreed on a post-hearing briefing schedule. Please advise as to the dates you jointly propose. Based on the proffer and the response, I will accept the additional document submitted by Mr. Shapiro but will not accept any further evidence. The evidentiary portion of the hearing is now closed. Thank you for your attention to this matter.

Hon. Shira A. Scheindlin
United States District Judge (Ret.)
Fellow, College of Commercial Arbitrators
FedArb Distinguished Neutral
AAA-ICDR Complex Commercial Panel
CPR Arbitration Panel

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Transcript of Arbitration Hearing – Day 1

Date: March 4, 2024
Case: MSV Energy, LLC, et al. –v–
Paz Global Ventures, LLC, et al.

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

AMERICAN ARBITRATION ASSOCIATION

Case No. 01-22-0004-8950

MSV SYNERGY, LLC AND MARK BARRON,

Claimants,

– Against –

PAZ GLOBAL VENTURES, LLC, AND SAADIA SHAPIRO,
Respondents.

BEFORE: SHIRR A. SCHEINDLIN, ARBITRATOR
Conducted Remotely Via Zoom
Monday, March 4, 2024
9:03 A.M.

Job No.: 526643
Pages: 1 - 284
Reported By: Anita M. Trombetta, RMR, CRR

A P P E A R A N C E S

ON BEHALF OF THE CLAIMANTS:

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–and–
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KENNER + IMPARATO, PLLC
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ON BEHALF OF THE RESPONDENTS:

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HELLER HOROWITZ & FEIT

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New York, New York 10016

212.699.4016

(APPEARANCES CONTINUED ON NEXT PAGE)

APPEARANCES CONTINUED

ON BEHALF OF THE RESPONDENTS:

SAADIA SHAPIRO, ESQUIRE

LIAM SHAPIRO, ESQUIRE

SHAPIRO & ASSOCIATES, PLLC

1145 Coney Island Avenue

Brooklyn, NY 11235

718.434.8800

ALSO PRESENT:

Acerlia Gomez

Sandy Sandiford

Victoria Boyle-Hebron

Mark Barron

Olesya Khanas, Meister Seelig & Fein, PLLC, Paralegal

ARBITRATOR SCHEINDLIN: We will start in the absence of Mr. Kenner.

Is that okay, Mr. Fritz?

MR. FRITZ: Yes.

ARBITRATOR SCHEINDLIN: Okay. Go ahead. then.

MR. FRITZ: This is with opening statements, your Honor?

ARBITRATOR SCHEINDLIN: Yes. please.

MR. FRITZ: Thank you.

The case, your Honor, is relatively straightforward. MSV, who I'll also refer to as the buyer, entered into a contract to purchase 250,000 boxes of powder-free nitrile medical examination gloves which the contract required to be delivered within 25 miles of the metropolitan New York City, New Jersey area.

It's undisputed that $2 million was funded into an escrow account of Mr. Shapiro as the purchase price for those gloves, and thus, it's undisputed that the claimants performed their obligations under the contract.

At some point, Mr. Shapiro represented, falsely, to the claimants that the factories were demanding additional funds to manufacture the gloves. And through a series of misrepresentations. Mr. Shapiro convinced the claimants to release the $2

million from his escrow account. And he did that through a series of knowing misrepresentations.

First, that there was an inability to procure the gloves without the release of the funds. That, as substitute collateral, he had owned an interest in a Harlem real estate development, which he purported to exchange for the release of the escrow.

The evidence will show that he did not have the interest, as he represented, and he was unable, upon demand, to document what that interest was.

The evidence will further show that Mr. Shapiro received medical-grade gloves but did not deliver them to — to the claimants.

The evidence will further show that instead of having the $2 million in escrow, Mr. Shapiro, who is a member of the New York Bar, at least for now, represented that it was an unconditional and full guarantee of performance by the seller, which is an entity that he owns in control, PAZ Global.

The evidence will further show that Mr. Shapiro has purposely coordinated for nonmedical-grade gloves, which are gloves that are used perhaps in restaurants, hotels, not for the medical industry. He knowingly had those delivered to the buyers, and he did that knowing that they would be rightfully rejected, and then he sold those gloves, which had been paid for which the claimants' money. He sold those for a profit on the side.

The evidence will show that even as recent as last week, Mr. Shapiro made knowingly false representations to your Honor. Mr. Shapiro has represented, directly and through his counsel, that the seller performed its obligations by making a deliv-

ery of gloves, container of gloves, to the claimants in March of 2021.

Mr. Shapiro knows, although he's withheld such information from your Honor, those were nonmedical-grade gloves. In fact, his own documentation reflects that. Nonetheless, he's represented to your Honor that that was a performance of the contract.

Mr. Shapiro also falsely represented to your Honor in his papers that the claimants took possession or accepted those gloves. Putting aside that Mr. Shapiro has no personal knowledge of that, as his own affirmation uses worth such as "I believe" or "apparently." You will hear testimony from the claimants' representatives that they did not take those gloves because they were nonconforming.

They had suggested a deal where they would take those, even though it was not in conformity with the contract, but the parties never effectuated any such — any such arrangement.

You will hear from Mr. Shapiro's own colleague, Al Germaine, that notwithstanding Mr. Shapiro's plea of innocence or ignorance, and that he is some patsy in this scheme, he is the architect of this scheme.

Now, I don't believe, because we don't have a fraud claim, that your Honor needs to determine that, but to the extent that Mr. Shapiro is claiming some type of equitable defense or force majeure that the failure of this transaction was out of his control, you will see that this is a fraud that was perpetrated not only in the claimants herein, but in other cases, and it was by design.

With respect to Mr. Shapiro's secondary defense of lack of notice or breach or other provisions of the contract, you will see emails and letters from the claimants' representatives where they have, by no uncertain terms and in no — and pulling no punches, your Honor, told Mr. Shapiro that he and PAZ Global were in breach of their obligations.

And you will see that after even after they put him on notice of the breach, to the extent the contract called for him to cure a breach within 14 business days, he did not do so.

So what you have here, your Honor, is a simple breach of contract for breach of the purchase and sale agreement and for breach of the guarantee which Mr. Shapiro, through 70 pages of what I'll refer to as gobbledygook, has attempted to blame everyone else but himself.

My clients are at $2 million. Mr. Shapiro profited, on the back end, through his fraud. And the claimants have had to spend at least the last two years winding their way first through federal court, and now here, in order to seek justice.

And an indication of the person that you are dealing with is set forth in the following:

* * *

[LOGO] AMERICAN ARBITRATION ASSOCIATION
INTERNATIONAL CENTRE FOR
DISPUTE RESOLUTION

COMMERCIAL ARBITRATION RULES
DEMAND FOR ARBITRATION

Mediation: If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box ☐.

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence adminisration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Name of Respondent: Paz Global Ventures, LLC and Saadia Shapiro, Esq.

Address: 3145 Coney Island Avenue

City: Brooklyn State: New York Zip Code: 11235

Phone No.: Fax No.:

Email Address: sshapiro@shapirolawyers.net

Name of Respresentative (if known): Saadia Shapiro, Esq.

Name of Firm: (if applicable): Shapiro & Associates, PLLC

Representative's Address: 3145 Coney Island Avenue

City: Brooklyn State: New York Zip Code: 11235

Phone No.: Fax No.:

Email Address: sshapiro@shapirolawyers.net

The named claimant, a party to an arbitration agreement which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

Brief Description of the Dispute:

Respondent Paz Global Ventures, LLC ("Seller") breached a Sales and Purchase Agreement by failing to deliver to claimant MSV Synergy, LLC ("Buyer") 250,000 boxes of powder-free nitrile medical examination gloves (the "PPE"). Respondent Saadia Shapiro, Esq. breached a Guarantee Agreement by failing to repay claimant Mark Barron the $2 million he paid, on Buyer's behalf, for the PPE.

Dollar Amount of Claim: $ 2,000,000

Other Relief Sought:

☑ Attorneys Fees ☑ Interest ☑ Arbitration Costs ☑ Punitive/Exemplary ☐ Other:

Amount enclosed: $ 7,700.00

In accordance with Fee Schedule:

☐ Flexible Fee Schedule ☑ Standard Fee Schedule

Please describe the qualifications you seek for arbitrator(s) to be appointed to hear this dispute:

Hearing locale: New York, NY

(*check one*)

☑ Requested by Claimant ☐ Locale provision included in the contract

Estimated time needed for hearings overall: hours or two days

Type of Business:

Claimant: medical equipment supply

Respondent: exportation of medical equipment

Are any parties to this arbitration, or their controlling shareholder or parent company, from different countries than each other? No.

Signature (may be signed by a representative): Kevin Fritz

Date: 11/21/2022

Name of Claimant: MSV Synergy, LLC and Mark Barron

Address (to be used in connection with this case: 108 West 13th Street (for MSV Synergy, LLC)

City: Wilmington State: Delaware Zip Code: 19801

Phone No.: Fax No.:

Email Address: kaf@msf-law.com

Name of Representative: Kevin Fritz

Name of Firm (if applicable): Meister Seelig & Fein LLP

Representative's Address: 125 Park Avenue

City: New York State: New York Zip Code: 10017

Phone No.: 212-655-3570 Fax No.: 212-655-3535

Email Address: kaf@msf-law.com

To begin proceedings, **please file online at *www.adr.org/fileonline***. You will need to upload a copy of this Demand and the Arbitration Agreement, and pay the appropriate fee.

Please visit our website at www.adr.org/support to file this case online. AAA Customer Service can be reached at 800-778-7879.