ORIGINAL

No. __-___

IN THE

Supreme Court of the United States

SAADIA SHAPIRO,

Petitioner,

v.

MARK BARRON, MSV SYNERGY, LLC,

Respondents.

On Application for Extension of Time to File Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

SAADIA SHAPIRO
Petitioner Pro Se
445 Hamilton Avenue
White Plains, New York 10601
212-606-2000
shapiro@shapirolawyers.net

July 8, 2026

(212) 719-0990
appeals@phpny.com

THE SUPREME COURT OF THE UNITED STATES

SAADIA SHAPIRO,

Applicant, ProSe,

v.

MSV SYNERGY, LLC, MARK BARRON

Respondents

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI

Case 25-77

SDNY Case 1:21-cv-07578-ER

Application to the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Second Circuit, for an Extension of Time within which to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Second Circuit:

"Applicant Saadia Shapiro, proceeding pro se and as the sole applicant, respectfully applies under Supreme Court Rules 13.5, 22, and 30 for a 60-day extension of time to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

SAADIA SHAPIRO, an attorney duly admitted to practice law in the State of New York and in this Court, declares pursuant to 28 U.S.C. § 1746 and upon penalty of perjury as follows:

1. I am a practicing attorney but represent myself, Saadia Shapiro, a Defendant-Appellant in this case, *pro se'*. I am the only applicant in this proceeding.

2. I submit this Application for a sixty-day extension of time within which to file a petition for a writ of certiorari to the United States Supreme Court.

JUDGMENT SOUGHT TO BE REVIEWED

Applicant seeks review of the Second Circuit's summary order affirming the Southern District of New York's December 11, 2024 judgment confirming an arbitration award and rejecting challenges alleging excess of arbitral authority, denial of due process, and manifest disregard.

RELEVANT DATES AND TIME TO FILE

The Second Circuit denied rehearing and rehearing en banc on March 24, 2026. Under Supreme Court Rule 13.3, the time to file a petition for a writ of certiorari runs from the date of the order denying timely rehearing. Excluding the trigger day and including the last day per Rule 30.1, the 90th day falls on June 22, 2026. The Applicant respectfully requests a 60-day extension to and including August 21, 2026.

Even though June 22 is in less than 10 days, I am requesting this extension based on "extraordinary circumstances". The order denying a rehearing was given on March 24, 2026. I was out of the office and did not have any access to email or court filings starting March 23, 2026 because I was scheduled to fly to Israel on March 26, 2026 (enclosed as **Exhibit 1** is a copy of the flight reservation for March 26, 2026). Because of the war in the Middle East and with Iran that flight was canceled. The next 10 days, the week before Passover, I was consumed with attempts to have my son and his pregnant wife (with their first child after many years of marriage) return to the United States from Israel. The airspace was closed, and all flights going to and from Israel at the time were canceled. I had my son take a bus to the Rafah crossing near the Gaza strip, change buses to an Egyptian bus which would take him and his wife to Cairo airport where they were able to board an Egyptian airline flight to the United States. These extraordinary circumstances as a result of a real-time war to ensure the safety of my son, his wife, and unborn child prevented me from going to work or accessing any emails or communications. I did not know of the March 24, 2026 denial of the rehearing until after the Passover holiday on Monday, April 13, 2026. I therefore ask that this five-day lapse from the ten-day rule be excused.

EXTRAORDINARY CIRCUMSTANCES WARRANTING AN EXTENSION

The circumstances giving rise to this application are not the ordinary press of legal practice, competing deadlines, or difficulties routinely encountered by litigants. They arose from an unprecedented international armed conflict that unexpectedly engulfed the region to which Applicant was scheduled to travel and immediately placed members of Applicant's immediate family in physical danger.

Applicant's scheduled trip to Israel became impossible when hostilities caused widespread closure of Israeli airspace and the cancellation of commercial flights. At virtually the same time, Applicant's son and pregnant daughter-in-law, expecting their first child after many years of marriage, became stranded in Israel during an active military conflict. Applicant's immediate attention shifted from professional matters to protecting the lives and safety of his family and arranging their evacuation from a region experiencing ongoing hostilities. That effort required continuous communications, coordination of international travel through Egypt after the closure of Israeli airspace, and constant attention during a period in which Applicant was effectively unable to conduct his law practice or monitor electronic court notifications.

These events were immediately followed by the Passover holiday. As a direct consequence of these extraordinary and unforeseeable circumstances, Applicant did not become aware of the Second Circuit's March 24, 2026 order denying rehearing until after Passover. The resulting delay in filing this application was therefore not the product of neglect, inadvertence, or a lack of diligence. Rather, it resulted directly from a genuine force majeure event and the urgent necessity of safeguarding Applicant's immediate family during an active international conflict.

Applicant respectfully submits that these facts present precisely the type of extraordinary, case-specific circumstances contemplated by Rule 13.5. This application does not seek additional time because preparation of a certiorari petition proved difficult or because of ordinary professional obligations. It seeks relief because events wholly outside Applicant's control temporarily prevented him from learning of the court's order and from preparing a timely application. Once Applicant became aware of the denial of rehearing, he acted diligently to prepare and file this application at the earliest practicable opportunity.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the judgment of the United States Court of Appeals for the Second Circuit once a timely petition for a writ of certiorari is filed.

GOOD CAUSE FOR AN EXTENSION

"The circumstances presented here are extraordinary and highly unusual. They do not involve ordinary workload, competing professional obligations, or inadvertent delay. Rather, they involve an active armed conflict, the evacuation of Applicant's immediate family from a war zone, the closure of international airspace, and the resulting inability to receive or review court communications. These facts constitute the type of exceptional circumstances for which Rule 13.5 authorizes relief."

The courts have held that genuinely unforeseeable circumstances beyond counsel's reasonable control may justify an extension of time. My family circumstances

and a deadly war seem to fill that criteria under 28 U.S.C. § 2101(c). Justice Scalia, who authored the most detailed body of in-chambers opinions on this subject, emphasized that the standard requires something that could not be adduced in virtually all cases—a reason that is genuinely case-specific and unforeseeable. Being preoccupied with extracting my children from a war-torn situation is certainly case specific and unforeseeable.

In Roth v U.S., 77 S.CT. 17 (1956) Justice Harlan dealt with an attorney who had a serious illness which constituted good cause, but the standard articulated by Justice Harlan was that the attorney was genuinely unable to prepare the petition within the standard period and that this was exactly the kind of unforeseeable, beyond-counsel's-control circumstance that the extension mechanism was designed to address. That was the case here as well.

Applicant is a sole practitioner and was overwhelmed. I have no help, no associate, no paralegal, and am handling all aspects of my practice and this matter alone. The burden of existing client deadlines, court appearances, and filings with the real life and death pressure involving my children left me insufficient time to prepare a careful and complete petition for a writ of certiorari.

The petition will present due process issues arising from the arbitration proceedings. The arbitrator committed a blatant and egregious denial of due process in violation of the 5th and 14th amendment of the United States Constitution when the arbitrator closed the hearings the day after Plaintiffs raised fraud for the first time in a supplemental post-

hearing brief, leaving me no opportunity to litigate the claims or even respond to the accusations. The arbitrator also committed misconduct by omitting critical contract language with ellipses to change meaning on the critical and dispositive issue of the arbitration award. All of this is compounded and highlighted by the fact that after four years of litigation not a single iota of evidence was presented showing that I took a red penny of plaintiff's money. Without the basic right to defend the claim against me and without any personal gain whatsoever in the underlying transaction, to me or any party associated with me, the arbitrator issued an award that was simply wrong. The District Court, then had no choice but to defer to the arbitration award without properly investigating the underlying facts. I became a victim because of a comedy of errors when each hierarchy of the legal process imported the award without looking into the substance of the award itself.

These issues require careful framing for this Court's review and additional time to assemble and cite-check record materials. I am not seeking delay for its own sake. I am requesting the minimum additional time needed to craft a cogent petition that fairly presents the important federal questions regarding due process in arbitration and manifest disregard standards, in a case with a voluminous record. The basic minimum time that I was deprived of because of actual force majeure circumstances.

INTENDED QUESTIONS PRESENTED

The petition will present questions including, but not limited to:

1. Whether due process and fundamental fairness were violated when, after years of arbitration proceedings without a pleaded fraud claim, and where the plaintiffs

specifically announced on the record that they were not seeking a fraud claim, an arbitrator permits a fraud theory to be raised for the first time in a supplemental post-hearing brief and then closed the record the next day, depriving the responding party of any opportunity to be heard on that issue.

2. Whether an arbitration award should be confirmed where the arbitrator's dispositive point and critical ruling rests on omissions of decisive contract language that materially alter the meaning of the clause used to impose liability.

3. Whether, and in what circumstances, manifest disregard of the law or the terms of the arbitration agreement remains a basis to vacate an award where the record reflects arbitral disregard of contractual standards (such as four separate and distinct force majeure clauses) and notice-and-opportunity principles.

4. There are two Second Circuit decisions that provide the controlling authority on these issues; (a) — manifest disregard of the law as a judicial gloss on FAA § 10(a)(4) — the leading post-*Hall Street* Second Circuit case is Schwartz v Merrill Lynch and Company Inc., 665F.3D 444 (2011) and most recently reaffirmed in Seneca Nation of Indians v b. New York, 998F.3D 618 (2021). With respect to the second issue (b) — vacatur for denial of fundamental fairness and notice-and-opportunity under FAA § 10(a)(3) — the leading Second Circuit case is Tempo Shane Corp. v. Bertek., Inc., 120 F .3D 16 (1997) as elaborated in : Kollel Beth Yechiel Mechil of Tartikov v. YLL Irrevocable Trust, 729 F.3D 99 (2013).

PROCEDURAL COMPLIANCE

The court of appeals entered judgment affirming the district court on January 30, 2026. A timely petition for rehearing and rehearing en banc was filed and denied on March 24, 2026. This application for extension of time to file a writ of certiorari is filed less than 10 days before the current due date as required by Rule 13.5 but as explained above, this was the result of extraordinary circumstances. Otherwise this Application complies with Rules 22 and 30.

STATEMENT OF THE CASE AND PROCEDURAL BACKGROUND

This case arises from a dispute over a 2020 Sales and Purchase Agreement for nitrile gloves, an Escrow Agreement, and a Guarantee Agreement; the district court compelled arbitration on September 7, 2022, and on June 3, 2024, the arbitrator awarded damages, fees, and interest against PAZ Global Ventures LLC and Saadia Shapiro, which the district court confirmed on December 11, 2024. On appeal, the Second Circuit affirmed, rejecting arguments that the arbitrator exceeded her powers, denied due process, and acted in manifest disregard. Applicant filed a petition for panel rehearing and rehearing en banc; the court denied rehearing on March 24, 2026. The mandate issued on April 1, 2026. The petition for rehearing asserted that the arbitration was fundamentally unfair because the arbitrator misquoted decisive contract provisions, ignored force majeure clauses, and closed the arbitration the day after a new fraud theory was first raised in a supplemental post-hearing brief, depriving Applicant of any chance to defend and respond.

PRAYER FOR RELIEF

For the foregoing reasons, Applicant respectfully requests that the time to file a petition for a writ of certiorari in this matter be extended by 60 days, from June 22, 2026, to and including August 21, 2026.

Dated: July 1, 2026
White Plains, New York

Respectfully Submitted,

By: /s/Saadia Shapiro

Saadia Shapiro, Applicant *pro se*'
445 Hamilton, Avenue
White Plains, New York, 10601
sshapiro@shapirolawyers.net
(212) 606-2000

CERTIFICATION OF SERVICE

I certify that on July 1, 2026, I served this Application for Extension of Time within which to File a Petition for a Writ of Certiorari, together with any accompanying papers, by first-class mail and by email where available, on counsel for Plaintiffs–Appellees and counsel for Shapiro & Associates Attorneys at Law, PLLC and PAZ Global Ventures, LLC", and on any other parties as follows:

Kevin Fritz
Meister Seelig & Fein, PLLC
125 Park Avenue, 7th Floor New York, NY 10017
Tel: (212) 655-3500
Email: kaf@msf-law.com
Counsel for Plaintiffs–Appellees MSV Synergy, LLC and Mark Barron.

Marla Shapiro
by email on consent
Counsel for Shapiro & Associates Attorneys at Law, PLLC
and PAZ Global Ventures, LLC.

Service has been made in compliance with Supreme Court Rule 29.

By: /s/Saadia Shapiro

Saadia Shapiro, Applicant *pro se*'
445 Hamilton, Avenue
White Plains, New York, 10601
sshapiro@shapirolawyers.net
(212) 606-2000

EXHIBITS ATTACHED TO THE APPLICATION FOR AN EXTENSION

1. March 26, 2026: Flight Reservations to the Middle East
2. March 5, 2026: Petition for Panel Rehearing and Rehearing En Banc identifying due process violations
3. April 1, 2026: Mandate United States Court of Appeals for the Second Circuit, Dkt. No. 25-77; S.D.N.Y. No. 1:21-cv-07578-ER.

EXHIBITS TO BE ATTACHED TO THE WRIT OF CERTIORARI

1. June 3, 2024: Arbitration Award
2. December 2, 2024: District Court confirmation of the arbitration award
3. May 27, 2025: Appeal briefs appealing District Court confirmation of the arbitration award
4. September 30, 2025: Reply Briefs
5. January 30, 2026: Second Circuit Summary Order affirming the judgment

7. March 24, 2026: Order denying panel rehearing and rehearing en banc, United States Court of Appeals for the Second Circuit, Dkt. No. 25-77.

Passenger: Shapiro Saadia Mr (ADT)
LY Booking code: ZBYZ8T
Ticket number:1142493587997

Issuing office INTERNET BOOKING, ELAL ISRAEL AIRLINES
Telephone: 972 3 9771111
Date:01FEB2026

TICKET RECEIPT

Please note this document is your ticket receipt. For your Boarding Pass, please contact the check-in counters.

To manage your booking please click here

From	To	Flight	Departure	Arrival	Last check-in
NEW YORK NEWARK LIBERTY INTL Terminal:B	TEL AVIV YAFO BEN GURION INTL Terminal:3	LY26	21:00 26MAR2026	14:20 27MAR2026	____
Class: Economy Flex (V) Baggage: 1PC (4) Fare basis: VHRF3US	Operated by: EL AL Marketed by: EL AL Booking status: OK (1) Frequent flyer number: 10194103			Duration: 10:20	
TEL AVIV YAFO BEN GURION INTL Terminal:3	NEW YORK NEWARK LIBERTY INTL Terminal:B	LY23	07:15 13APR2026	12:00 13APR2026	____
Class: Economy Flex (K) Baggage: 1PC (4) Fare basis: KHRF3US	Operated by: EL AL Marketed by: EL AL Booking status: OK (1) Frequent flyer number: 10194103			NVB: 28MAR2026 (2) Duration: 11:45	

(1) OK = Confirmed (2) NVB = Not valid before (3) NVA = Not valid after (4) Each passenger can check in a specific amount of baggage at no extra cost as indicated above in the column baggage.
(*) In the event of a change in the type or configuration of the aircraft, including a change to an aircraft operated by another airline, changes may be made to your seat, in accordance with the conditions of carriage.

TICKET REMARKS

For the terms and conditions of the ticket in English, including cancellation and change policies, please click on this link

Baggage Policy

EWRTLV		
1st Checked Bag:	Free of Charge	UPTO50LB 23KG AND62LI 158LCM
2nd Checked Bag:	110.00USD	UPTO50LB 23KG AND62LI 158LCM
TLVEWR		
1st Checked Bag:	Free of Charge	UPTO50LB 23KG AND62LI 158LCM
2nd Checked Bag:	110.00USD	UPTO50LB 23KG AND62LI 158LCM

LB = Weight In Pounds, KG = Weight In Kilos, LI = Linear Inches, LCM = Linear Centimeters, MAX = Maximum Allowed, PC = Number of Pieces
Baggage allowance and charges are provided for information only. Additional discounts may apply depending on advance purchase or Flyer-specific

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Fare Calculation: EWR LY TLV Q305.00 931.50LY EWR Q305.00 1081.50NUC2623.00END ROE1.00 XF EWR4.5	Fare:	USD 2623.00
Form of payment: EXT	Taxes/Fees/Charges:	USD 8.00AP USD 5.60AY USD 23.40US USD 23.40US USD 3.84XA USD 7.00XY USD 7.39YC USD 33.87IL USD 4.50XF
Endorsements: /C1-2 FARE RESTRICTIONS APPLY -BG LY	Total Amount:	USD 2740.00

There are limitations for carriage of hazardous materials, especially lithium batteries.
It is mandatory to check the terms of carrying them on board on the EL AL website.
Please see:https://www.elal.com/en/PassengersInfo/Baggage/Pages/Dangerous-Material.aspx

The carriage of certain hazardous materials, like aerosols, fireworks, and flammable liquids, aboard the aircraft is forbidden. If you do not understand these restrictions, further information may be obtained from your airline.

LEGAL AND PASSENGER NOTICES

Important notice to passengers traveling to/from U.S

Advice to International Passengers on Limitations of Liability: Passengers embarking upon a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that the provisions of an international treaty (the Warsaw Convention, the 1999 Montreal Convention, or other treaty), as well as a carrier's own contract of carriage or tariff provisions, may be applicable to their entire journey, including any portion entirely within the countries of departure and destination. The applicable treaty governs and may limit the liability of carriers to passengers for death or personal injury, destruction or loss of, or damage to, baggage, and for delay of passengers and baggage.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under an international treaty. For further information please consult your airline or insurance company representative.

Security notice

As part of the check-in process, EL AL Security conducts security checks for all passengers at the check-in counters or boarding gates

Privacy notice

Data protection notice: Your personal data will be processed in accordance with the applicable carriers privacy policy and, if your booking is made via a Travel Agent with its privacy policy. This is available at http://www.iatatravelcenter.com/privacy or can be obtained from the carrier or Travel Agent directly as and if applicable. You should read this documentation, which applies to your booking and specifies, for example, how your personal data is collected, stored, used, disclosed and transferred.

Carriage and other services provided by the carrier are subject to conditions of carriage, which are hereby incorporated by reference.

To view EL AL's terms of contract please click on this link

25-77-cv

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

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.

On Appeal from the United States District Court
for the Southern District of New York

COMBINED PETITION FOR PANEL REHEARING AND REHEARING *EN BANC*

SAADIA SHAPIRO, ESQ.
Defendant-Appellant Pro Se
2291 Seventh Avenue
New York, New York 10030
212-606-2000

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INTRODUCTION AND STATEMENT PURSUANT TO FED. R. APP. P. 40(b)(2)

This petition respectfully seeks rehearing to clarify the procedural posture where fraud liability arose. Arbitration is entitled to substantial deference, but that deference presumes a process where parties had a meaningful opportunity to respond before liability was imposed.

This petition is about fairness. Arbitration can be efficient, but it cannot be legitimate where the decision-maker distorts the governing contract and then deprives the accused party's ability to respond to a new fraud accusation. Rehearing is warranted because the award rests on a misquoted contract and a closed record that made defense impossible.

We are not disputing the arbitrator's discretion weighing evidence, but she actually omitted words from the decisive clause in the purchase agreement to achieve a biased result.[1] On Page 21, she quotes paragraph **7(A)(i)** to the purchase agreement however, **she quotes only a portion** of the clause **while leaving out the portion that precluded fraud.**

The arbitration began September 2021. Fraud was not plead in the arbitration demand nor claimed in the evidentiary hearings. To the contrary; appellees proclaimed twice they had no fraud claim and only a contract dispute.

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[1] Possibly because of infirmity throughout arbitration from undisclosed medical condition. (Transcript–**A273**-99:16,408:2&584:11, AAA Docket-3/3/24.

The evidentiary portion closed on 3/8/24 with no indication that fraud would be adjudicated.

In his opening statement Appellees' counsel declares(**A141-Page-7-17)**

"Now,I don't believe, because we don't have a fraud claim, that your Honor needs to determine that, …….. "

….then appellee summarizes;

"So what you have here, your Honor, is a simple breach of contract…."

(A141,8-13);

The arbitrator herself writes;

***"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……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."(*A453-B).**

Appellant's 5/13/24 response to the arbitrator's post-hearing questions of 4/29/24(**Exhibit 2**) expressly stated that fraud was not litigated and therefore would not be addressed.(**Exhibit 3;alsoA741,Par46–47**). Appellees response to those same questions raised fraud for the first time(labeling it "supplemental post-hearing" brief). This was nearly three years into the arbitration and after the evidentiary record ended. The arbitrator then declared the arbitration closed the very next day, 5/14/24, without permitting any rebuttal evidence, cross-examination, or responsive briefing on fraud.(**Exhibit-4**).

The award issued on 6/3/24 and for the first time imposed fraud liability. Because fraud had not been litigated and the arbitration ended the day after fraud was raised, Appellant had no opportunity to defend the accusation before the award issued. Appellant immediately protested by letter dated 6/6/24.(**Exhibit-5**).

Thousands of pages of discovery, exhibits, pleadings, and hearings all related to logistics, delivery, and product quality..... but never to fraud. The case that the District Court and Panel were reviewing never actually existed.

Independently, the fraud finding rested on a false premise that appellees' escrowed funds were sent to an unauthorized recipient. The undisputed documentary record shows the opposite: the funds were transmitted to the overseas factories through the factories' broker and not a single penny was diverted to Appellant.

The sale of PPE was always controlled by brokers, especially during the pandemic. The appellees/buyers testified they had 15 years of experience in the global market and were known in the industry. They knew that the only commercially viable method of purchasing products in Asia was through a broker.

The arbitrator fabricated reasonings to render ineffectual the parties' mutually-agreed upon force majeure language. (That the pandemic was already underway when the Sales and Purchase Agreement (SPA) was signed).

Rehearing is warranted because the award rests on a fundamentally distorted record and on procedures incompatible with minimum standards of fairness. First, the arbitrator misquoted two dispositive clauses of the SPA, omitting key language that authorized payment to brokers and substituting a stricter standard ("adherence") for the contract's actual standard ("reconciliation"). Second, the arbitrator deprived Appellant of any meaningful opportunity to defend fraud by closing the arbitration one day after fraud was raised for the first time. Third, the arbitrator disregarded force majeure provisions that directly addressed pandemic disruption—the very context in which delivery timing and location were evaluated.

WHY REHEARING IS NECESSARY

This petition does not seek reconsideration of factual findings or reweighing of arbitral evidence. Rehearing is warranted because the panel's decision appears to rest on a misunderstanding of the procedural posture in which fraud liability arose. Fraud was neither plead nor litigated during the evidentiary phase and was introduced only in a supplemental post-hearing submission immediately followed by closure of the arbitration. Because that sequence eliminated any meaningful opportunity to respond, clarification of the record chronology may materially affect the Court's analysis under its fundamental-fairness precedents governing arbitration review.

ROADMAP

This petition turns on three record-based propositions: (1) the award rests on misquotation of the governing contract where the omitted language is dispositive; (2) the arbitrator closed the record on 5/14/24, one day after fraud was raised on 5/13/24, making any response impossible; and (3) overwhelming documentary evidence—including wire transfers and a recording produced by appellees—showing appellees knew the funds were to be sent to broker Glover and that Appellant did not receive a single penny. Each ground independently warrants rehearing and vacatur under 9 U.S.C.§ 10(a)(3); together they compel it.

WHY THIS CASE IS DIFFERENT

This petition does not seek reconsideration of factual findings or reweighing of arbitral evidence. Rather, it presents the narrow circumstance in which fraud liability was imposed after the evidentiary record had closed; a threshold failure of adjudicative integrity: a fraud finding built on an incomplete quotation of the controlling agreement and a procedure that eliminated any meaningful opportunity to respond. Those features place this Petition within the narrow category of arbitration cases where judicial intervention is required to preserve fundamental fairness.

RECORD-BASED PROPOSITIONS WARRANTING REHEARING.

(1) **SPA ¶7(A)(i)** expressly permits disbursement of escrowed funds "to the seller *and to any brokers*"; the award omitted the word "brokers" while relying on the truncated quotation to find fraud.

(2) A recording produced by appellees confirms their knowledge and approval that funds would be transmitted to broker Glover.(**A721;Dkt.-145-23**).

(3) Bank wire transfers trace the funds to factories, establishing Appellant did not receive or retain appellees' money.(**A518–A537**).

(4) Appellant's 5/13/24 submission expressly stated fraud would not be addressed because no fraud claim existed.(**Exhibit-3**).

(5) Fraud was raised for the first time on 5/13/24; the arbitration was closed 5/14/24.(**Exhibit-4**).

(6) Appellant protested the fraud determination promptly on 6/6/24 (the award issued 6/3/24).(**Exhibit-5**).

(7) Appellant contested the absence of fraud claims in four appellate filings: the Shapiro and Paz appeal briefs and the Shapiro and Paz reply briefs.

(8) Four force majeure clauses expressly addressed pandemic and epidemic disruptions: **SPA ¶1(viii), ¶2(iii), ¶10**, Escrow Agreement **¶26**.

(9) A polygraph examination corroborates that Appellant did not commit fraud and did not benefit financially.(**Exhibit 6**).

ARGUMENT

This case turns not on disagreement with an arbitrator's weighing of evidence, but on whether fraud liability may be imposed after the arbitration closed and without any opportunity to respond. The sequence in which fraud first appeared—and the closure of the arbitration the following day—frames each issue that follows and requires review under this Court's fundamental-fairness precedents.

I. THE MAY 13–14, 2024 SEQUENCE DEPRIVED APPELLANT OF DUE PROCESS AND WARRANTS REHEARING

Chronology Expansion:

9/21/21	arbitration complaint filed; does not include fraud.
3/3/24	opening statement of hearings. Plaintiffs declares twice they are not seeking a fraud claim.
3/8/24	arbitrator declares the evidentiary portion of the hearing closed
4/29/24	arbitrator provides the parties with post hearing questions which make no mention of fraud.
5/13/24	both parties submit responses to the questions and labeled them as "supplemental post hearing briefs". Appellees inject fraud for the first time
5/14/24	Arbitrator circulates an email declaring the arbitration closed and no responses may be submitted
6/3/24	fraud appears in the arbitration award.
6/6/24	appellant's write to the arbitrator protesting the inclusion of fraud in the award

Appellees introduced fraud for the first time on 5/13/24. Within less than 24 hours, the arbitrator declared the arbitration closed on 5/14/24.(**Exhibit-4**). The tribunal deprived Appellant of the minimum procedural protection required under this Court's fundamental-fairness precedents: a meaningful opportunity to respond before liability is imposed. This is not a technical defect but a core violation of fundamental fairness.

When the award issued on 6/3/24 and for the first time imposed fraud liability, Appellant immediately protested by letter dated 6/6/24.(**Exhibit-5**).

The Panel refers to Appellees assertion that appellants did not contest, in their appeal, the late inclusion of a fraud claim….but this is not true; This statement cannot be reconciled with the below dated submissions;

Appeal Submissions Contesting Fraud;

i. Shapiro brief; Page 36,Par 17(**Dkt-36.1**)

"The issues of fraud……..were not part of the arbitration demand or litigated in the arbitration hearings. ***Appellees attorney specifically stated in his opening statement that petitioners were not making any claims for fraud ……"***

ii. Shapiro brief; Page 36,Par 17(**Dkt-36.1**)

"The very first time fraud came up was in appellees "Supplemental post hearing brief submitted on 5/13/24". The arbitrator then declared the arbitration closed less than 24 hours later on 5/14/24. ***I never had the opportunity to offer evidence to defend myself against accusations of fraud or personal liability*****…….***"Procedural due process requires "notice and an opportunity to be heard", and I was deprived of both."*

iii. Shapiro brief; Page 38(Par-17,**Dkt-36.1**)

"On 5/13/24 when there was no opportunity to respond, the appellees "blindsided" me with claims of fraud for the first time ..... with a "supplemental post hearing brief". The next day, on 5/14/24, (less than 24 hours later) the arbitrator declared the arbitration to be closed.

This is a classic example of depriving a party of procedural due process; making an accusation with no opportunity for the accused to defend or provide evidence. "

iv. Paz Reply brief; Pages 34-37(**Dkt.-54.1**)

v. Shapiro reply brief; Pages 35-38(**Dkt.-53.1**)

*"By closing the arbitration the day after appellants were ambushed with the fraud claim is a denial of "fundamental fairness of the arbitration proceeding". The due process clause of the 5th and 14th Amendment of the U.S. constitution provides that no person ..... shall be deprived of life, liberty, or property without due process of law." Due process means that there should be some form of a hearing in front of a neutral fact-finder and an opportunity to be heard" "**at a meaningful time and in a meaningful manner**".*

The Second Circuit tries to avoid inconsistent results. In ***Tempo Shain Corp. v.***

Bertek, Inc.,120-F.3d-16,20(2dCir.-1997);

".....an arbitrator ***"must give each of the parties to the dispute an adequate opportunity to present its evidence and argument."***

(see also *Transit Cas. Co. v. Trenwick Reinsurance Co., 659 F.Supp. 1346, 1354*

(S.D.N.Y. 1987), 841-F.2d-1117 (2d-Cir.1988).

"fundamental fairness" and procedural due process is an "Issue of Exceptional

Importance" and should be consistent with Circuit Precedent.

Due Process in the Fifth amendment requires a hearing and an opportunity to **be heard "at a meaningful time and in a meaningful manner,"** Mathews v. Eldridge, 424-U.S.-319, 333–34, 96 S.Ct.- 893, 47-L.Ed.2d-18 (1976). U.S. v. Karper,-847F.Supp.-2d-350,357(N.D.N.Y.2011).

The Second Circuit addressed situations where new accusations are raised late in arbitration. *In Carina Intern. Shipping Corp. and Adam Maritime Corp.,961-F.Supp.-559(1997) t*he defendant *waived its right by not requesting* reopening of evidentiary hearings when an additional claim was added after the close of hearings, but here the appellants/defendants *immediately requested* that the arbitrator reconsider. The award was issued on 6/3/24 and was contested on 6/6/24.**(Ex.-6)**.

The Second Circuit applies a fundamental fairness standard when evaluating procedural irregularities;*(F. Hoffmann-La Roche Ltd. v. Qiagen Gaithersburg, Inc.,730-F.Supp.2d-318(2010).* Ignoring force majeure clauses, not reading the judgments against the factories, not listening to the recording that appellees approved sending the money to Glover, and certainly misquoting the decisive contract clause is fundamental unfairness.

Second Circuit courts and international arbitration standards recognize a violation of fundamental fairness when it affects a party's ability to defend. N.Y. Courts analyze whether arbitral procedures were adhered such as notice and

hearing rights as reasons to deny award confirmation. *(Arbitration Between Ashraf and Republic New York Securities Corp.,14 F.Supp.2d 461(1998)).*

The Second Circuit review focuses on whether the procedures denied a party the opportunity to participate meaningfully (present evidence or take cross-examination). Here, that opportunity was denied when the arbitration was declared closed the day after fraud was first claimed, and the issue was not raised or litigated throughout the arbitration.

Absence of contest before the award was procedurally impossible, not waiver.

II. THE ARBITRATOR COMMITTED MISCONDUCT BY MISQUOTING THE GOVERNING CONTRACT ON THE DISPOSITIVE ISSUE.

The fraud finding rests on a premise that escrow funds were released to an improper recipient ("someone other than the Seller"). To support that premise, the award quotes SPA ¶7(A)(i) incompletely. The clause provides, in full, that after funds are wired to escrow,

"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." (SPA ¶7(A)(i)) (emphasis added).

The Arbitrator, however, omits the phrase "*and to any brokers*" and inserts instead ellipses / dots ("......"). The omission of the words "and to any brokers" is dispositive because Glover was the broker/payment intermediary through which the factories required payment. When the contract specifically authorizes payment to brokers, wiring funds to the broker cannot be recast as "sending money to someone other than the seller" to manufacture fraud.

This is not a good-faith interpretive dispute. An adjudicator may interpret contractual language, but a decision based on a materially incomplete quotation of the controlling text is **not adjudication on the record. It is a distortion of the record.** Where the omitted language directly answers the very question the award purports to resolve—whether payment to Glover was authorized—its omission

prejudices the party accused of wrongdoing and undermines the minimum fairness required by the FAA.

The award contains a second misquotation that further demonstrates unreliability and partiality. On page 2 of the award(**A434**), the arbitrator allegedly quotes paragraph 2(i) of the SPA stating that the seller agreed to sell "in strict *adherence*" to the agreement. But the SPA says otherwise. It says "strict *reconciliation"* with the SPA.....not "adherence." The difference matters. "Adherence" denotes uncompromising compliance, while "reconciliation" recognizes adjustment to practical realities—such as a pandemic. The award used the fabricated "adherence" standard to treat flexible performance decisions (including pandemic delivery location and timing) as breaches. Altering the standard of performance by substituting a different word is not interpretation; it's rewriting.

Two separate contract misquotations on outcome-determinative issues—payment authorization and performance standard—are not harmless. They are objective markers of arbitral misconduct because they show the tribunal did not resolve the dispute by applying the parties' written agreement as executed. Rehearing is warranted to correct the panel's inadvertent acceptance of an award that rests on altered contractual text.

III. THE ARBITRATOR'S REFUSAL TO GIVE EFFECT TO FOUR FORCE MAJEURE CLAUSES REMOVED THE CONTRACTUAL DEFENSES THAT DIRECTLY ANSWERED THE ALLEGED BREACHES.

The two principal bases for breach findings were alleged late delivery and a 25-mile delivery-radius requirement.[2] Yet the parties' contracts contained four force majeure provisions expressly addressing pandemic disruption, delays, and adjustment of terms: SPA ¶1(viii) (includes "**pandemics**"), SPA ¶2(iii) (permitting adjustment of contract terms), SPA ¶10 (voiding relief where delay persists), and Escrow Agreement ¶26 (relief for delays caused by "**epidemics**"). These provisions were central in a COVID-era glove transaction.

Ignoring those clauses was not a minor oversight. The force majeure provisions governed whether alleged late delivery could constitute breach at all, and whether logistics constraints (such as delivery location -West Coast instead of East Coast) were excused or subject to "reconciliation". [3] Where the contract itself provides the rule of decision, the tribunal may not disregard it and instead impose liability under a stricter, fabricated standard. The refusal to consider these clauses

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[2]. The contract doesn't include a delivery timeline. Appellants provided substantial evidence (expert opinion and formidable publications) that 6-9 months during the pandemic was reasonable. The arbitrator ignored this evidence even though the Appellees provided no evidence whatsoever.

[3] "reconciliation" coincides with 33 waivers regarding delivery on the East Coast in appellant briefs. Appellee testified(**A141,page151:10**) that they never mentioned a 25-mile radius requirement. The arbitrator also ignored an email offering appellees to receive at least three containers anywhere they chose**(A513).**

and related evidence constitutes misconduct and a denial of a fundamentally fair hearing under 9 U.S.C.§ 10(a)(3).(**A27,A36**)

A Second Circuit decision; *World Trade Ctr. LLC v. Cantor Fitzgerald Sec.,6-Misc.-3d-382,386,789 N.Y.S.2d-652,655(Sup.-Ct.-2004)* gave special treatment to a force majeure clause **that specifically delineates what are included as events of force majeure.**

A Seventh Circuit case, almost identical; **The court denied the breach and refused to deviate from the plain meaning of the force majeure clause which included the word "pandemic".** (*Dental Health v. Sunshine Cleaning, 657-F.-Supp.-3d-1151(E.D.-Wis.-2023),*

Here, the arbitrator was not permitted to fabricate reasonings to render ineffectual the parties' mutually-agreed force majeure language to create, *sua sponte*, her own intuition-based and factually unsupported version of delivery timeframes during a pandemic.

Force majeure applied to delayed delivery and the 25-mile radius issue. That the pandemic was already underway when the SPA was signed is irrelevant reasoning invented by the arbitrator as the parties **specifically included "pandemic" and "epidemic" as force majeure circumstances in the agreements**.

The arbitrator's award evaluated breach as if these pandemic causes did not exist.

IV. OVERWHELMING EVIDENCE ESTABLISHED AUTHORIZED BROKER ROUTING AND NO ENRICHMENT.

The documentary record confirms appellees understood from the beginning that the funds were to be sent to the factory's broker, Glover, to pay the factories. Emails and communications like the recorded meeting provided by appellees with the broker(**A721;Dkt.-145-23**) reflect approval of the routing and recognition that Glover was the necessary intermediary. The wire transfers trace the funds to their intended destination—overseas factories—and show that Appellant did not retain or receive funds.(**A518–A537**). Sending the funds to the broker Glover was not fraud.

Unrefuted evidence also demonstrated that releasing the money to the factories' agent, Glover, was the correct procedure; also corroborated by the polygraph test taken by Appellant(**Exhibit 6**). The Asian factories do not deal with individual consumers. This payment path was approved by appellees and was operational necessity.

Furthermore, stating that the money should have been released to the "Seller"-Paz, meant that the money should have been released *by* ME *to* MYSELF; an absurd and illogical conclusion when the money is supposed to go to Asia to

buy gloves. Even if the money went to Paz–the Seller, I would have wired it right out to Glover five minutes later! How does skipping this middle unnecessary step constitute fraud? Sending the money to Paz first would be commercially irrational.

There was no other option. The appellees knew that the only way to purchase gloves in Asia was through a broker.... in this case Glover.[4]

The bank wire transfers, the judgments in China, and the polygraph test all confirm that not a single penny is unaccounted for.

In short, the record supplies three mutually reinforcing proofs:

(1) the contract permits disbursement to brokers (**SPA ¶7(A)(i)**);

(2) the recording demonstrates that appellees knew and approved broker routing (**A721; Dkt. 145-23**); and

(3) the wire transfers confirm funds went to factories and not to Appellant (**A518–A537**).

There was no concealment of any information or the money trail. This is also corroborated by the polygraph.(**Ex. 6**). An award that labels this authorized payment structure as "fraud" cannot be sustained without disregarding the record.

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[4] See also **8(J)**-escrow agreement(**A36**)permitting the escrow/paymaster to **appoint an agent and paragraph 1** allowing releasing funds to a Paz' "*nominated bank account*" of my choice.

CONCLUSIONS

1. Additional context underscores why the broker-routing issue is dispositive. The SPA contemplated an escrow/paymaster structure in which funds would be held in an attorney escrow account and then disbursed according to an escrow agreement. The explicit reference to disbursement "to any brokers" reflects the commercial reality of international sourcing transactions: factories often require payment through an intermediary broker who coordinates procurement, freight, and allocation. Treating such broker routing as "sending money to someone other than the seller" rewrites the deal the parties made and converts ordinary performance into wrongdoing.

2. Nor can the misquotation be dismissed as immaterial. The award's fraud reasoning depends on the assertion that funds were released to an improper party. Once the omitted broker language is restored, the award's premise collapses: the contract itself authorizes broker disbursement, and the record shows Glover was the broker. Under any fair process, that would require the tribunal to consider whether disbursement to Glover complied with the escrow terms rather than presume impropriety from a truncated quotation.

3. The force majeure issue likewise goes to the heart of breach. The transaction occurred during unprecedented pandemic disruption in global logistics and medical supply markets. The SPA expressly includes pandemics in force

majeure clauses and permits adjustment of obligations. Yet the award treated delivery timing and location constraints as strict breaches under a fabricated "adherence" standard. That approach deprives the force majeure clauses of meaning and ignores the parties' allocation of risk—a core error in applying New York contract law.

4. The due process violation is especially stark because it involved not simply a late-filed argument, but an accusation of fraud carrying personal liability. The record was closed before Appellant could marshal evidence responsive to the accusation, including record citations to the broker-authorization clause, the recording, and the wire-transfer tracing. Fundamental fairness requires, at minimum, that the accused party be permitted to respond before the tribunal decides the accusation. The May 13–14 closure made that impossible.

The panel's statement that Appellant failed to contest fraud is not a mere characterization; it is a record mistake. The April 13,2024 submission (**Exhibit 3**) shows Appellant's position before fraud was raised: fraud was not in the case. The 6/6/24 letter (**Exhibit 5**) shows Appellant's immediate protest once the award imposed fraud. The appellate briefs and reply briefs show repeated contests of fraud on appeal. Rehearing is warranted to correct this misapprehension and to avoid perpetuating an award entered without a fair opportunity to defend.

Appellant respectfully submits that the integrity of arbitration depends on minimum procedural safeguards. Where the record shows misquotation of dispositive contract language and immediate closure after a new fraud accusation, judicial deference cannot substitute for review.

This petition ultimately concerns not disagreement with an arbitrator's weighing of evidence, but whether fraud liability may be imposed when fraud was neither pleaded nor litigated and arose only after the evidentiary record had closed. Where a party is denied any meaningful opportunity to respond before liability is imposed, the resulting award cannot reflect the fundamentally fair process that federal arbitration law requires. Because clarification of that procedural sequence may materially affect the Court's analysis, rehearing is respectfully warranted so that the case may be considered on a fully understood procedural record.

Rehearing is warranted because the award rests on misquotation of dispositive contractual language, refusal to give effect to force majeure protections central to pandemic performance, disregard of overwhelming documentary proof that Appellant received no funds, and a May 13–14, 2024 procedural ambush that denied any meaningful opportunity to be heard. The Court should grant rehearing, vacate confirmation, and remand for proceedings consistent with fundamental fairness.

Dated: February 12, 2026

Respectfully Submitted,
For Defendant-Appellant Saadia Shapiro pro se
New York, New York

/s/ Marla Shapiro

Saadia Shapiro

For Defendants
Shapiro & Associates, PLLC and
Paz Global Ventures LLC
Marla Shapiro
New York., New York

Marla Shapiro

/s/ Marla Shapiro

CERTIFICATE OF COMPLIANCE

This document complies with the word limit prescribed by Fed. R. App. P. 40(d)(3)(A) because it contains 3,888 words, excluding the parts exempted by Fed. R. App. P. 32(f).

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word, Times New Roman 14-point.

Dated: February 17, 2026

By: /s/ Saadia Shapiro

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2026, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the Second Circuit using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 17, 2026

By: Saadia Shapiro

/s/ Saadia Shapiro

MANDATE

25-77
MSV Synergy, LLC v. Shapiro

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.

MARK BARRON, MSV SYNERGY, LLC,

Plaintiffs-Appellees,

v. 25-77

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

A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit

[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.

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

Docket No: 25-77

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