

Affirmed and Opinion Filed October 1, 2025



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-24-00184-CV

**MUSA AUTO HOLDINGS, LLC, Appellant
V.
RICHARD FRUNZI, Appellee**

**On Appeal from the 162nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-14445**

MEMORANDUM OPINION

Before Justices Garcia, Miskel, and Lee
Opinion by Justice Miskel

This appeal involves an employment dispute that the trial court referred to arbitration upon the parties' request. The arbitrator determined that, under the terms of the applicable employment agreement, the employer did not have "Cause" to terminate its employee. The employer appeals the trial court's final judgment confirming the arbitrator's award in favor of the employee. We affirm the trial court's judgment.

I. Background

Appellant MUSA Auto Holdings, LLC ("MUSA") is involved with providing auto leasing financing to consumers. MUSA hired appellee Richard Frunzi to serve

as an executive of the company. The parties entered into an employment agreement which described Frunzi's duties and provided terms for his at-will employment.

The employment agreement permitted MUSA to terminate Frunzi's employment period "for Cause" or "without Cause." It also allowed Frunzi to terminate the employment period "with Good Reason" or "without Good Reason." The agreement defined the terms "Cause" and "Good Reason." If MUSA terminated Frunzi's employment period "for Cause," or if Frunzi voluntarily resigned "without Good Reason," then the agreement entitled Frunzi to receive pay and benefits only through the termination date. On the other hand, if MUSA terminated Frunzi's employment period other than "for Cause," or if Frunzi resigned "for Good reason," then the agreement entitled Frunzi to certain accrued benefits and an additional severance payment under certain conditions.

The employment agreement also stated that Frunzi would be granted certain units in MUSA's profit sharing plan. A separate grant agreement governed this grant of units to Frunzi. The grant agreement provided that, if Frunzi was terminated "for Cause," or if he resigned for any reason other than "with Good Reason," then he would lose his vested profit interests; if not, he would retain them.

A. Frunzi's Termination and Subsequent Lawsuit Against the Company

The Termination Letter

MUSA delivered a letter to Frunzi that terminated him "for Cause," as defined by the employment agreement, based on reasons that included:

- the company counseled Frunzi after a female employee complained he had pursued an unwanted personal relationship with her;
- Frunzi drove a company car while under the influence of alcohol and got into an accident;
- Frunzi harassed an employee after their relationship ended and forced her to leave the company;
- Frunzi adopted a major policy change without approval; and
- Frunzi bullied and harassed multiple female employees, leading to an internal investigation.

MUSA's termination letter relied on a report authored by Nicole Manna, an in-house counsel at MUSA, which detailed the results of Manna's internal investigation of Frunzi's conduct.

Frunzi's original petition

A few weeks later, Frunzi sued MUSA. He alleged the company never provided him a seat on the board as was required by the employment agreement. He also alleged that he began noticing behavior by MUSA's CEO, Jeff Morgan, that Frunzi believed was improper and could negatively harm MUSA and its investors. Frunzi repeatedly voiced his concerns to Morgan. He alleged that MUSA retaliated against him by "taking away [his] job duties and responsibilities and overall ability to perform the essential functions for which he was hired, to the point that Frunzi was essentially stripped of virtually all ability to do his job."

Frunzi also alleged that, in response to MUSA's actions, he sent the company a letter claiming that it had "Constructively Terminated" him under the employment

agreement, which allowed him to terminate the agreement for “Good Reason” if MUSA did not do so. He claimed that, “instead of curing,” MUSA sent him the termination letter.

Frunzi asserted that MUSA did not have “Cause” under the employment agreement to terminate his employment. He alleged that MUSA instead “created bogus reasons ‘for Cause’ to terminate [him] to avoid paying [him] his substantial severance payments he is contractually entitled to.” He also alleged that he was entitled to his vested profit interests under the grant agreement because MUSA terminated him “without Cause.”

Based upon these allegations, Frunzi asserted claims against MUSA that included breach of contract, a demand for an accounting, a declaratory judgment claim, and a claim for attorney’s fees.

MUSA’s counterclaim

MUSA answered and asserted a counterclaim against Frunzi, alleging that he breached the employment agreement, “including by way of example and not limitation, retaining and failing to return or destroy a Management Presentation and accompanying Confidential Information Memorandum regarding a potential transaction involving MUSA and another party.” Based on this allegation, MUSA asserted claims for: breach of contract; a request for injunctive relief; and a request for attorney’s fees. MUSA also added two claims for declaratory judgment and requested that trial court construe the terms “Cause” and “Good Reason” in the

employment agreement, because this construction would determine whether MUSA is excused from further performance under the employment agreement and whether Frunzi's vested interests under the grant agreement were forfeited upon his separation from employment with MUSA.

B. The Arbitration

The parties executed and filed with the trial court an agreement to stay the lawsuit in favor of binding arbitration. Accordingly, the trial judge stayed all proceedings in the lawsuit and ordered that the parties' claims and disputes be submitted to binding arbitration in accordance with their arbitration agreement.

The parties arbitrated their dispute. Following the arbitration hearing, the arbitrator signed a final award that found MUSA did not terminate Frunzi "for Cause" as defined by the employment agreement. Given this finding, the arbitrator awarded Frunzi \$360,000 of salary, a bonus of \$45,000, health premiums of \$22,500, and attorney's fees of \$102,539.63, together with interest from the date of the award until fully paid. The arbitrator also awarded Frunzi vested profits under the grant agreement. Moreover, the arbitrator ordered that MUSA must pay \$14,405 for the arbitrator's compensation and other fees and expenses related to the arbitration.

Within the final award, the arbitrator summarized the parties' competing evidence and contentions on the question of whether MUSA terminated Frunzi for or without "Cause." The arbitrator "accept[ed] much of [MUSA's] proof about Frunzi's behavior" and "credited the findings of Manna's Report, and believed

[Frunzi] engaged in many of the behaviors referenced there.” The arbitrator remarked that, absent the limiting “for Cause” language in the employment agreement, each of Frunzi’s behaviors would be a sufficient reason to fire him.

However, the arbitrator also concluded that his decision was “constrained by the Agreement, which contains a very specific and limited definition of Cause.” The arbitrator determined that, to find “Cause” under the employment agreement’s definitions asserted by MUSA, he must find that Frunzi acted willfully. The arbitrator reviewed several definitions of “willful misconduct” and “willful” and determined that MUSA had not proven that Frunzi’s conduct was willful, noting that “[o]ne way to prove scienter would be to offer clear and specific warnings to Frunzi that unmistakably make[] clear the offensive behavior and consequences for failing to comply.” The arbitrator completed his analysis with the following observations:

One would also expect, if the behavior were so offensive, [MUSA] would have acted upon it immediately after learning about it in April. The long delay in his completion of Manna’s Report (from early May to late August) with no satisfactory explanation for the delay in connection with the eschaton of Frunzi and Morgan “butting heads” buttresses the notion that the conclusion[s] contained in the Report were not the true reason for Frunzi’s termination. As is[,] the language used in the Report concludes that a “for Cause” termination is justified but fails to recite the contractual basis upon which she relies.

Ultimately, the arbitrator found that Frunzi was not terminated for Cause as defined by the agreement.

C. Frunzi's Application to Confirm the Award

Frunzi filed in the trial court a motion to lift the stay and an application to confirm the arbitration award. He also requested that the trial court award the attorney's fees and costs incurred in connection with confirming the arbitration award.

MUSA countered by filing in the trial court a motion to vacate the award and a response to Frunzi's application to confirm it. In its motion and response, MUSA contended that the arbitrator's decision "demonstrates that he exceeded the authority conveyed by the Texas Arbitration Act." Specifically, MUSA asserted that "the Arbitrator credited [MUSA's] evidence finding Cause to terminate Frunzi, but [it] found that the stated reasons for firing Frunzi were 'not the true reason' for Frunzi's termination, but rather, were pretext." MUSA argued that neither Texas law nor the employment agreement required proof of Frunzi's scienter to establish that he was terminated "for Cause." It urged that "the Arbitrator exceeded his powers in rendering an award that added a subjective reasonableness term into the employment agreement." Thus, in MUSA's view, "the Arbitrator refused to apply the agreement as written and created a new term of the agreement to justify the Arbitrator's decision." As such, MUSA asserted that the trial court should vacate the arbitrator's award pursuant to § 171.088(a)(3)(A) of the Texas Civil Practice and Remedies Code, because the arbitrator exceeded his powers.

The trial court signed a final judgment that confirmed the arbitration award. The final judgment also ordered that Frunzi recover from MUSA (1) an award of \$530,039.63, (2) post-judgment interest, (3) \$3,633 in reasonable and necessary attorney’s fees for seeking to enforce the award, and (4) taxable court costs. In addition, the final judgment ordered that Frunzi recover from MUSA his “[v]ested profit interests in the Grant Award.”

MUSA then appealed the final judgment.

II. Standard of Review

We review a trial court’s decision to vacate or confirm an arbitration award de novo, based on the entire record. *Cambridge Legacy Group, Inc. v. Jain*, 407 S.W.3d 443, 447 (Tex. App.—Dallas 2013, pet. denied). Because Texas law favors arbitration, our review is extremely narrow. *Allegheny Millwork, Inc. v. Honeycutt*, No. 05-21-00113-CV, 2022 WL 2062876, at *3 (Tex. App.—Dallas June 8, 2022, pet. denied) (mem. op.). We presume an arbitration award is valid and give it great deference. *Credit Suisse Secs. (USA) LLC v. Barnes*, 05-23-00520-CV, 2025 WL 823872, at *5 (Tex. App.—Dallas Mar. 14, 2025, no pet.) (mem. op.); *Allegheny Millwork*, 2022 WL 2062876, at *3.

Review of an arbitration award is so limited that even a mistake of fact or law by the arbitrator in the application of substantive law is not a proper ground for vacating an award. *Centex/Vestal v. Friendship W. Baptist Church*, 314 S.W.3d 677, 683 (Tex. App.—Dallas 2010, pet. denied). A reviewing court may not substitute its

judgment for that of the arbitrator's merely because it would have reached a different decision. *Centex/Vestal*, 314 S.W.3d at 686; *Credit Suisse Secs.*, 2025 WL 823872, at *8; *Allegheny Millwork*, 2022 WL 2062876, at *3.

III. Applicable Law

A party asserting that a trial court should vacate or modify an arbitration award has the ultimate burden of proving grounds for vacating or modifying the award. *Credit Suisse*, 2025 WL 823872, at *2; *see also Allegheny Millwork*, 2022 WL 2062876, at *3. The only ground that MUSA asserted in this case for vacating the award is that the arbitrator exceeded his powers under the Texas Arbitration Act. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 171.088(a)(3)(A).

An arbitrator derives his power from the parties' agreement to submit to arbitration. *Nafta Traders, Inc. v. Quinn*, 339 S.W.3d 84, 90 (Tex. 2011). Arbitrators exceed their powers when they decide matters not properly before them. *Centex/Vestal*, 314 S.W.3d at 684; *Credit Suisse*, 2025 WL 823872, at *5. Arbitrators do not exceed their authority when the matter addressed is one which the parties agreed to arbitrate. *Centex/Vestal*, 314 S.W.3d at 686. A complaint that the arbitrator decided the issue incorrectly or made mistakes of law is not a complaint that the arbitrator exceeded his powers. *Ancor Holdings, LLC v. Peterson, Goldman & Villani, Inc.*, 294 S.W.3d 818, 830 (Tex. App.—Dallas 2009, no pet.). A party cannot submit an issue to an arbitrator and then, when an unfavorable result occurs, claim the arbitrator exceeded his authority in deciding the issue. *Centex/Vestal*, 314

S.W.3d at 686. In other words, “[i]t is only when the arbitrator departs from the agreement, and, in effect, dispenses his own idea of justice that the award may be unenforceable.” *Id.* at 684. Put another way, arbitrators may exceed their powers when the arbitration award is not rationally inferable from the parties’ agreement. *Humitech Development Corp. v. Perlman*, 424 S.W.3d 782, 792 (Tex. App.—Dallas 2014), *abrogated on other grounds*, *Hoskins v. Hoskins*, 497 S.W.3d 490, 483 n.4, 494 (Tex. 2016). “[W]e look to whether the arbitrator’s award was so unfounded in reason and fact, so unconnected with the wording and purpose of the [contract] as to manifest an infidelity to the obligation of the arbitrator such that the arbitrator failed to interpret the [contract] at all.” *Ancor Holdings*, 294 S.W.3d at 830–31 (citations and internal quotation marks omitted).

IV. Lack of Arbitration Transcript

MUSA previously asked this Court for an extension of time to file a reporter’s record from the arbitration. However, “[w]hen a non-prevailing party seeks to vacate an arbitration award, it bears the burden in the trial court of bringing forth a complete record that establishes its basis for vacating the award.” *Statewide Remodeling, Inc. v. Williams*, 244 S.W.3d 564, 568 (Tex. App.—Dallas 2008, no pet.). Since the reporter’s record was not filed in or considered by the trial court, we denied MUSA’s motion. Frunzi now asserts that the absence of a “complete transcript” from the arbitration hearing requires us to affirm the trial court’s judgment confirming the award.

We agree with Frunzi that, without an arbitration transcript, we must presume the arbitration evidence adequately supports the award. *Centex/Vestal*, 314 S.W.3d at 684; *Credit Suisse*, 2025 WL 823872, at *2, *9; *Allegheny Millwork*, 2022 WL 2062876, at *3. However, this presumption merely limits, rather than entirely forecloses, our consideration of whether the arbitrator exceeded his authority in this instance. *See Centex/Vestal*, 314 S.W.3d at 685; *Allegheny Millwork*, 2022 WL 2062876, at *3. We can consider the parties' agreement and the matters submitted in arbitration to determine whether the arbitrator exceeded his power, and then presume any remaining evidence supports the award. *Centex/Vestal*, 314 S.W.3d at 685. We inquire whether the arbitrator had the authority, based on the arbitration agreement and the parties' submissions, to reach a certain issue, not whether the arbitrator correctly decided the issue. *Allegheny Millwork*, 2022 WL 2062876, at *4.

The record in this appeal contains the arbitration award and the employment agreement, which are relevant to our analysis of whether the arbitrator exceeded his powers. Accordingly, we will consider these two documents in our analysis. We will also presume that any remaining evidence from the arbitration which is not in the appellate record supports the award.

V. MUSA Failed to Meet its Burden to Establish That the Arbitrator Exceeded His Powers.

MUSA's sole issue asserts that:

[T]he trial court err[ed] by entering a final judgment confirming a final arbitration award where the arbitrator exceeded his powers by engrafting a subjective standard of intent onto the parties' agreement,

finding that even if the evidence demonstrated that the contractual standard for termination for Cause was met, termination for Cause was nevertheless not justified because the grounds stated for Appellee's termination were not the 'true reason' for his termination.

MUSA focuses on the portion of the arbitrator's findings that "accept[ed] much of MUSA's proof about Frunzi's behavior" and that "credit[ed] the findings of Manna's report" and "believe[ed][Frunzi] engaged in many of the behaviors referenced there." MUSA contends that these findings established that it terminated Frunzi "for Cause." MUSA also asserts that, despite these findings, the arbitrator "rewrote the parties' agreement" by also requiring MUSA "to prove that the offered bases for termination were 'the true reason for Frunzi's termination.'" In MUSA's view, the arbitrator "went far beyond his authority [by] varying the contractual definition of Cause."

Frunzi responds that the arbitrator determined the dispositive question before him was whether MUSA had "Cause" to terminate Frunzi under the Employment Agreement's "very specific and limited definitions." Frunzi asserts that, in making this determination, "the Arbitrator exercised his authority to interpret the express terms of the Agreement in conjunction with all of the evidence presented at the Arbitration Hearing, and he concluded that Frunzi was not terminated for Cause as defined under the Agreement and that MUSA's claimed reasons for termination for Cause were not the true reason for Frunzi's termination." According to Frunzi, the arbitrator "acted directly within the scope of his powers" and "did exactly what the

parties asked him to do.” We agree with Frunzi that MUSA has not shown that the arbitrator exceeded his powers.

In determining whether Frunzi was terminated “for Cause” as defined by the employment agreement, the arbitrator first examined whether MUSA established “Cause” to terminate Frunzi as defined by two definitions of “Cause” in the employment agreement. In making this determination, the arbitrator observed that the employment agreement includes the term “willful” in its definition of “Cause.” The arbitrator reviewed several definitions of “willful misconduct” and “willful,” and concluded that “willfulness requires proof of Frunzi’s statement of mind,” i.e., his “scienter.” The arbitrator then measured MUSA’s evidence against this scienter requirement and determined that MUSA did not prove willfulness because, for example, it did not “offer clear and specific written warnings to Frunzi that unmistakably ma[de] clear the offensive behavior and consequences for failure to comply.”

MUSA bears the burden of proving that the arbitrator exceeded his powers. *See* CIV. PRAC. & REM. § 171.088(a)(3)(A); *Credit Suisse*, 2025 WL 823872, at *2; *Allegheny Millwork*, 2022 WL 2062876, at *3. In reviewing the arbitrator’s award, we do not substitute our judgment for the arbitrator’s or evaluate whether we would have reached a different decision. *Centex/Vestal*, 314 S.W.3d at 686; *Ancor Holdings*, 294 S.W.3d at 826; *Credit Suisse*, 2025 WL 823872, at *8. We may not vacate an arbitration award for errors in interpretation, application of the law or facts,

or even manifest disregard of the law. *Credit Suisse*, 2025 WL 823872, at *8; *Allegheny Millwork*, 2022 WL 2062876, at *4. As long as the issue to be decided was properly before the arbitrator and the award is rationally inferable from the parties' agreement, any errors of fact or law do not exceed an arbitrator's powers. *Humitech*, 424 S.W.3d at 792; *see also Centex/Vestal*, 314 S.W.3d at 686; *Ancor Holdings*, 294 S.W.3d at 830–31. We conclude that whether MUSA terminated Funzi “for Cause” was properly before the arbitrator and that the arbitrator's above analysis was rationally inferable from the employment agreement's definition of “Cause.” Accordingly, MUSA did not meet its burden to prove that the arbitrator exceeded his powers in in construing and applying the term “Cause” as defined by the employment agreement.

MUSA focuses on the final paragraph of the arbitrator's “for Cause” analysis, which concluded that the circumstances surrounding the creation of the Manna report “buttresse[d] the notion that the conclusion[s] contained in the Report were not the true reason for Frunzi's termination.” We conclude that this paragraph was unnecessary to the first portion of the arbitrator's analysis, which applied the definition of “Cause” to the evidence and determined that MUSA did not prove the “willfulness” portion of this definition. In other words, given that the arbitrator acted within his powers in construing and applying the term “Cause” to MUSA's evidence, we need not decide whether the additional paragraph of the arbitrator's “for Cause” analysis, standing alone, would have exceeded the arbitrator's powers.

For each of these reasons, we overrule MUSA's sole issue.

VI. Appellate Attorney's Fees

Frunzi's first amended petition sought to recover his "attorney's fees and costs incurred in prosecution of this matter" under the terms of the parties' agreements and pursuant to § 38.001 and § 37.009 of the Civil Practice and Remedies Code. The arbitrator's award determined that Frunzi is entitled to reasonable and necessary attorney's fees of \$102,539.63.

Frunzi's motion to confirm the arbitrator's award also sought to recover attorney's fees and costs incurred in connection with the preparation, filing, and service of the motion "and for all activities required to obtain the Court's confirmation of the Final Award," as provided in the arbitration award and pursuant to § 38.001 and § 171.092(b)(1) and (b)(2) of the Civil Practice and Remedies Code. The trial court's final judgment confirming the arbitration award awarded Frunzi \$3,633 in "reasonable and necessary attorney's fees for seeking to enforce the Award."

In addition to this award by the trial court, Frunzi now asks this Court to remand the case back to the trial court so that it may determine an award of additional attorney's fees that Frunzi incurred in defending this appeal. We must deny this request for three reasons.

First, the record does not show that Frunzi requested or proved up appellate attorney's fees in the trial court. Accordingly, Frunzi has waived these fees. *See*

Varner v. Cardenas, 218 S.W.3d 68, 69–70 (Tex. 2007) (per curiam) (holding that party that failed to prove post-judgment and appellate fees in initial trial could not recover them on remand).

Second, Frunzi’s request would require us to alter the trial court’s judgment because appellate attorney’s fees were not awarded in the judgment. Such a request can only be considered when the party seeking the alteration has filed a notice of appeal, which Frunzi did not do in this case. *See* TEX. R. APP. P. 25.1(c). “By seeking an award of appellate attorney’s fees in this Court, [appellee] seeks a more favorable judgment than awarded below. Such a request . . . can only be considered when the party seeking the alteration has filed a notice of appeal or provides ‘just cause’ for granting the party more favorable relief.” *Stouffer v. Levine and Father Operating Corp.*, No. 05-19-00001-CV, 2020 WL 3410636, at *4 (Tex. App.—Dallas June 22, 2020, no pet.) (mem. op.). Frunzi has not provided just cause for his request for more favorable relief in the absence of a notice of appeal.

Third, Frunzi requests that we *affirm* the judgment and remand, which is not permitted by our rules of appellate procedure. *See* TEX. R. APP. P. 43.2(d) (permitting remand only in the context of *reversing* the trial court’s judgment); *Reich & Binstock, LLP v. Scates*, 455 S.W.3d 178, 185–86 (Tex. App.—Houston [14th Dist.] 2014, pet. denied).

For each of these reasons, we may not remand this case to the trial court for an award of Frunzi’s appellate attorney’s fees.

VII. Conclusion

We affirm the trial court's judgment, which confirmed the arbitrator's award in favor of Frunzi.

/Emily Miskel/
EMILY MISKEL
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

MUSA AUTO HOLDINGS, LLC,
Appellant

No. 05-24-00184-CV V.

RICHARD FRUNZI, Appellee

On Appeal from the 162nd Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-18-14445.
Opinion delivered by Justice Miskel.
Justices Garcia and Lee participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee RICHARD FRUNZI recover his costs of this appeal from appellant MUSA AUTO HOLDINGS, LLC.

Judgment entered this 1st day of October 2025.