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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ELAINE CULOTTI, Plaintiff and Respondent, v. GREG BRILES, Defendant and Appellant.	B279508 (Los Angeles County Super. Ct. No. SC123035)

APPEAL from a judgment of the Superior Court of Los Angeles County, Nancy L. Newman, Judge. Affirmed.

Shaw Koepke & Satter and Jens B. Koepke; Law Offices of Cynthia Fruchtman and Cynthia Fruchtman; Lance S. Strumpf for Defendant and Appellant Greg Briles.

The Rudd Law Firm, Christopher L. Rudd and Ariel Harman-Holmes for Plaintiff and Respondent Elaine Culotti.

Defendant Greg Briles (Briles) appeals a judgment confirming a contractual arbitration award entered in favor of his former business partner, Elaine Culotti (Culotti).[1] Briles asserts that approximately one-third of the arbitration award ($345,000 of $1.1 million) was awarded without proper notice, on an unsubmitted issue, and in violation of California law and public policy. He thus urges us to correct the award by ordering the trial court to strike the disputed portion.

We conclude the arbitrator did not exceed his powers in awarding the disputed $345,000. We thus affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Partnership Agreement

Between 2003 and 2010, Culotti and Briles, working through partnerships, bought and sold eight high-end homes in Los Angeles. In each case, Culotti identified, obtained, remodeled, marketed, and sold the homes, and Briles financed the purchases and remodels.

In October 2010, Culotti and Briles formed a general partnership to buy and sell a residential property located at 2009 La Mesa Drive, Santa Monica, California (the property). The governing general partnership agreement provided that the property was being purchased for $7,813,567, of which Briles "put in the initial deposit of $255,000 and, through personal funds or personal loans, will contribute the balance of the Purchase Price."

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[1] Culotti and her then-husband, Gary Culotti, both were parties to the partnership agreement, but were treated as a single partner. Gary Culotti eventually assigned all of his interest in the partnership to Culotti, who is the only respondent. We therefore sometimes refer to Culotti and her ex-husband collectively as "Culotti."

Upon the sale of the property, Briles was to be reimbursed for the purchase price, "plus any future monies advanced for the La Mesa Property, plus any applicable interest." Thereafter, the net proceeds "will be paid 75 percent to Briles and 25 percent to Culotti."

Under the terms of the agreement, "generally . . . Briles shall contribute the money and Culotti the work." However, "the parties acknowledge that Briles' funds for these projects is not unlimited. There will be times when Briles and Culotti shall jointly contribute funds to the Partnership. The Partners must mutually agree on the expenses or funds." The parties "must meet, confer, and discuss in good faith to what extent the parties shall develop, not develop, improve, not improve, maintain, construct, refurbish, remodel, or do what other things need to be done to develop the La Mesa Property. [Culotti and her husband] have one vote in this regard, and Briles has three votes. Decisions are to be made by majority vote."

The partnership agreement provided that each party "shall devote such time as is reasonably necessary to accomplish the goals of the Partnership in a timely manner. The parties shall use their best efforts to deal with each other in good faith and make prudent good faith business decisions on behalf of and in the best interest of the Partnership. Each Partner shall have an equal voice in the management and all aspects of the Partnership business." Culotti was to spearhead "construction, decorating, landscaping, and/or improvements to the Property," but Briles "shall have input, access, and be kept advised at all times of everything that is going on at the Property." In the event of a dispute regarding aesthetic issues concerning the property, "after the parties have dealt with each other in good faith and

considered each other's positions, Briles shall have the right to overrule Culotti."

The agreement represented that at the time of signing, "the Partners are uncertain as to how title will be held. Regardless, if it is in the name of the Partnership, business entity, [Culotti's husband], or another individual, it shall be an asset of the Partnership for all purposes."

B. The Arbitration Agreement

The partnership agreement contained arbitration provisions, as follows:

". . . In the event the parties hereto shall be unable to agree upon any matter with respect to the effect, applicability, interpretation, or any other part of this Agreement whatsoever, or any provision hereof, then the matter shall be submitted and resolved in the following manner:

". . . If the parties can agree to a mutual arbitrator, and they so designate, in writing, the arbitrator shall make a decision, and the parties shall be bound thereby;

". . . If any controversy or claim arising out of or relating to this Agreement or the breach of any term hereof cannot be settled through direct discussion, the parties agree to endeavor first to settle the controversy or claim by mediation conducted in the County of Los Angeles and administered by JAMS under its Commercial Mediation Rules. If a controversy or claim is not otherwise resolved through direct discussions or mediation, it shall be resolved by arbitration conducted in the County of Los Angeles and administered by JAMS in accordance with the Commercial Arbitration Rules of JAMS. The JAMS rules for selection of an arbitrator shall be followed, except that the arbitrator shall be an experienced arbitrator familiar with the

relevant and applicable law in California. . . . The arbitration shall be concluded within ninety (90) days of initiation of the arbitration, unless otherwise ordered for good cause. Thirty (30) days prior to the scheduled arbitration hearing, the parties shall exchange briefs, lists of witnesses, and all documents that they intend to use at the arbitration. No further discovery shall be allowed, unless ordered by the arbiter upon a showing of good cause and necessity. The arbiter's decision shall be in writing, with findings of fact and conclusions of law.

". . . Any award made under the provisions of this paragraph shall be final and binding upon the parties hereto, and judgment may be entered thereon in any court having jurisdiction thereof."

C. Arbitration Demand

Between 2010 and 2014, Culotti supervised, and Briles financed, a $5 million remodel of the property. The relationship between Culotti and Briles deteriorated, however, and in December 2014, Culotti filed an arbitration demand with JAMS. Culotti alleged that beginning in about November 2013, Briles began to breach his obligations under the partnership agreement by failing to fund ongoing construction of the property; and in June 2014, without notice to or permission of Culotti, Briles transferred the property from the partnership to a family trust he controlled. Culotti asserted a variety of tort causes of action, including for constructive fraud, fraudulent conveyance, breach of fiduciary duty, and conversion.

Briles filed a counterclaim, asserting causes of action for breach of contract and various torts. Briles alleged that he stopped funding the partnership in March 2014 after he learned that Culotti was self-dealing, failing to properly account for

expenses, and had not completed work on the property in a timely and professional manner. Briles therefore locked Culotti out of the property and agreed to allow her access only under his supervision.

D. Arbitration Award

A five-day arbitration hearing before retired judge Rex Heeseman commenced on August 24, 2015. On September 28, 2015, the arbitrator issued a Final Arbitration Award that terminated the partnership agreement, dissolved the partnership, and ordered the property to remain in Briles's trust. The arbitrator further ruled that Culotti would recover nothing on her tort claims, and Briles would recover nothing on his counterclaims. However, the arbitrator awarded Culotti damages for breach of contract, finding as follows:

". . . After its purchase, title to the Property was initially in Briles' name. Many months later, evidently due to the Culottis' request . . . , Briles transferred title to the Partnership. Many more months later, without communicating with the Culottis, Briles transferred title to his Trust. In this and other regards, Briles should have communicated and cooperated more with the Culottis, especially as the Agreement emphasizes 'good faith,' 'best interest,' and 'best efforts.' Still, Briles' 'final word' with reference to many aspects of the Partnership (see below) in effect indicates he did not act tortiously. Additionally, Briles did not jeopardize the Property (e.g., by a mortgage) and it still remains the Partnership's only 'asset.' . . .

" . . . After committing over $7.8 million to purchase the Property, Briles thereafter advanced over $5 million more for the benefit of the Property. With that background, especially in light of Paragraph 6.2 of the Agreement, Briles had the right to fund

or not to fund the Property in late 2013 and thereafter, albeit he should have communicated [with Culotti]. However, there were few, apparently only one or two, specific written requests by the Culottis to Briles for more funding in late 2013. . . . [¶] . . . [¶]

". . . While he was in 'control' of the Property, some of Briles' decisions (e.g., Rosten's retention as the broker) seem questionable, but those decisions were not tortious. . . .

". . . The Culottis assert Briles was and still is uncommunicative and uncooperative and did not act in good faith towards them. Even if true, Briles still had the 'final word' on the sale of the Property and other important matters regarding the Partnership. See, e.g., paragraphs 6 (capital contribution), 10.1 (artistic issues) and 10.2 (business decisions) of the Agreement.

". . . From October 2014 to the present, especially with his use of locks, Briles has precluded the Culottis' 'access' to the Property, as well as little if any 'communication' outside of this arbitration. I doubt whether any such access or 'communication' would have currently resulted in a different situation at the Property. Still, all of this was and still is a contractual breach of the Agreement.

". . . I accept the Culottis' invitation to conf[o]rm to proof a claim for breach of contract (i.e., of the Agreement). The following contract damages are therefore awarded to the Culottis:

"(i) $531,870 . . . for House of Rock[2] 'contributions' to the Property . . . .

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2 The House of Rock was an entity formed by Culotti and a partner. It solicited donations of fixtures and appliances for the property, which were showcased during large musical events on the property.

"(ii) $170,145 for the Culottis' cash deposits. . . .

"(iii) $101,709 for the Culottis' cash contributions for the Property's benefit. . . .

"(iv) $345,000 ($30,000 per month times 11.5 months (the time between the October 2014 'lockout' and this award)) for denied 'access' and related matters. I reject, though, the Culottis' contention such access would have resulted in meaningful improvements to the Property, including its favorable sale.

". . . [Neither t]he Culottis nor Briles is the 'prevailing party' within the meaning of paragraph 23 of the Agreement; neither is therefore entitled to an award of attorneys' fees. . . ."

E. Petitions to Confirm and Vacate the Arbitration Award

The Culottis petitioned to confirm, and Briles petitioned to correct or vacate, the arbitration award. Briles challenged only the $345,000 award to the Culottis, which he contended was a penalty that was not authorized by the partnership agreement, not sought by the Culottis, not the subject of proper notice, and in violation of California public policy.

Following a hearing, the trial court confirmed the arbitration award and entered judgment. The judgment awarded $1,148,724 to the Culottis; vested title to the property in Briles; terminated the partnership agreement, dissolved the partnership; and awarded prejudgment interest of $314 per day. Briles timely appealed from the judgment.

DISCUSSION

I.

Legal Standards

The legal standards governing judicial review of arbitration awards are well established. "California law favors alternative dispute resolution as a viable means of resolving legal conflicts. 'Because the decision to arbitrate grievances evinces the parties' intent to bypass the judicial system and thus avoid potential delays at the trial and appellate levels, arbitral finality is a core component of the parties' agreement to submit to arbitration.' (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 10 (*Moncharsh*).)" (*Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 916.)

The California Arbitration Act (Code Civ. Proc., § 1280 et seq.)[3] provides limited grounds for judicial review of arbitration awards. Under the act, a court may vacate an award if it was (1) procured by corruption, fraud, or undue means; (2) issued by a corrupt arbitrator; (3) affected by an arbitrator's prejudicial misconduct; (4) in excess of the arbitrator's powers; (5) substantially prejudiced by an arbitrator's refusal to postpone a hearing for good cause or to hear evidence material to the controversy; or (6) issued by an arbitrator who failed to make statutorily required disclosures. (§ 1286.2, subd. (a).) An award may be corrected for (1) evident miscalculation or mistake; (2) issuance in excess of the arbitrator's powers; or (3) imperfection in the form. (§ 1286.6.) Our analysis concerns whether the arbitrator acted in excess of his powers. (§ 1286.2, subd. (a)(4).)

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[3] All subsequent statutory references are to the Code of Civil Procedure.

On appeal from an order confirming an arbitration award, we review the trial court's order (not the arbitration award) under a de novo standard. (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 373 (*Advanced Micro Devices*); *EHM Productions, Inc. v. Starline Tours of Hollywood, Inc.* (2018) 21 Cal.App.5th 1058, 1063.)

II.
The Arbitrator Did Not Exceed His Powers

Briles urges that the $345,000 award to Culotti was in excess of the arbitrator's power because it (1) resolved an issue not submitted to the arbitrator, (2) was awarded without proper notice, and (3) constituted a penalty in violation of California law. As we now discuss, none of these contentions has merit.

A. The Record Does Not Reflect that the Arbitrator Decided an Unsubmitted Issue

Briles urges that the $345,000 award was an "invented" measure of damages based on a contract claim Culotti did not plead. He contends that the award therefore decided an unsubmitted issue and, hence, was beyond the arbitrator's powers.

Briles's contention is unsupported by the record. Briles urges us to conclude that Culotti "did not introduce any evidence or substantiate any damages specific to losing unfettered access to the La Mesa Property"—but because he included only fragments of the reporter's transcript of the arbitration hearing in the appellate record, we do not reach this claim on the merits. (See *Rhue v. Superior Court of Los Angeles County* (2017) 17 Cal.App.5th 892, 897, italics added ["appellant has the burden of providing an adequate record . . . . *Failure to provide an*

adequate record on an issue requires that the issue be resolved against appellant."].)[4]

In any event, even if Briles's claim were supported by the appellate record, it lacks legal support. Briles does not dispute that Culotti sought the arbitrator's resolution of her claim that she was wrongfully excluded from the property; he contends only that the arbitrator adjudicated the exclusion claim on a *ground* (breach of contract) not asserted or briefed by the parties. But our Supreme Court has held that an arbitrator does not exceed his authority by deciding a submitted issue on an unsubmitted legal theory: "Although the parties, by agreement, can certainly exclude specific questions from arbitration, in the absence of such restriction *an arbitrator has the power to decide the submitted matter on any legal or factual basis*, whether or not any party has relied upon that particular basis." (*Moshonov v. Walsh* (2000) 22 Cal.4th 771, 777, italics added.) Accordingly, even if the record supported Briles's factual claim, the claim nonetheless lacks legal merit.[5]

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[4] After oral argument, Briles submitted a motion to augment the record with the five-volume reporter's transcript of the arbitration hearing. The request is denied as untimely, and on the alternative ground that it seeks augmentation of the appellate record with matters not before the trial court. (Cal. Rules of Court, rules 8.121(a) [appellant must designate appellate record "[w]ithin 10 days after filing the notice of appeal"], 8.155 [appellate record may be augmented with "[a]ny document filed or lodged in the case in superior court"].)

[5] We decline to address in detail *Totem Marine Tug & Barge, Inc. v. North Am. Towing Inc.* (5th Cir. 1979) 607 F.2d 649 (*Totem*) and *Cobler v. Stanley, Barber, Southard, Brown & Associates* (1990) 217 Cal.App.3d 518 (*Cobler*), on which Briles

B. The Record Does Not Reflect that the Arbitrator Failed to Provide Briles with Notice

Briles next contends that the arbitrator's award of contract damages violated the JAMS rule requiring reasonable notice to parties because "[t]he first time that he had notice that a penalty might be assessed as damages on an unpled contract claim was when he received the arbitrator's award." Like the "unsubmitted issue" contention, this contention fails for lack of an adequate record: Because a full transcript of the arbitration proceedings was not included in the appellate record, we do not reach the merits of Briles's factual contention that he did not receive timely notice that the arbitrator might award Culotti contract damages.

C. The $345,000 Award Is Rationally Related to the Contract and the Breach and Does Not Violate California Law or Public Policy

Briles contends that California law "bars contractual provisions or remedies that constitute a penalty or a forfeiture—which means a remedy that does not represent an estimate of the actual damages the claimant suffered." He urges that the $345,000 award constituted such a "penalty" or "forfeiture" and,

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relies. *Totem* was decided under the Federal Arbitration Act (9 U.S.C. § 1 et seq.), not the California Arbitration Act, which governs the present appeal between California parties. (*Avila v. Southern California Specialty Care, Inc*. (2018) 20 Cal.App.5th 835, 839–840 [Federal Arbitration Act "governs agreements involving interstate commerce"].) *Cobler* was decided before *Moncharsh* "and relied heavily on *Ray Wilson Co. v. Anaheim Memorial Hospital Assn.* (1985) 166 Cal.App.3d 1081, a decision *Moncharsh* disapproved." (See *Hall v. Superior Court* (1993) 18 Cal.App.4th 427, 435.)

therefore, exceeded the arbitrator's powers. As we now discuss, the contention lacks merit.

1. Briles Has Not Established that a "Penalty" or "Forfeiture" Violates California Law

Briles begins with the premise that a breach of contract remedy violates California law if it constitutes a "penalty" or "forfeiture." But none of the cases Briles cites suggest that California law precludes a breach of contract award that does not approximate a party's actual damages. Instead, these cases hold that a court should not enforce *a liquidated damages clause*—that is, a clause " 'used to indicate an amount of compensation to be paid in the event of a breach of contract, the sum of which is fixed and certain *by agreement*' " (*McGuire v. More-Gas Investments, LLC* (2013) 220 Cal.App.4th 512, 521, italics added)—if the compensation "bears no reasonable relationship to the range of actual damages that the parties could have anticipated would flow from a breach." (*Ridgley v. Topa Thrift & Loan Assn.* (1998) 17 Cal.4th 970, 977; see also *Harbor Island Holdings v. Kim* (2003) 107 Cal.App.4th 790; *Greentree Financial Group, Inc. v. Execute Sports, Inc.* (2008) 163 Cal.App.4th 495; *Purcell v. Schweitzer* (2014) 224 Cal.App.4th 969; *Applied Elastomerics v. Z-Man Fishing Products, Inc.* (N.D. Cal. 2007) 521 F.Supp.2d 1031; *Atel Financial Corp. v. Quaker Coal Co.* (N.D. Cal. 2001) 132 F.Supp.2d 1233; *Timney v. Lin* (2003) 106 Cal.App.4th 1121; *City of Vernon v. Southern Cal. Edison Co.* (1961) 191 Cal.App.2d 378.)

Briles's and Culotti's partnership agreement did not provide for liquidated damages, and thus the arbitrator had no

occasion to enforce a liquidated damages clause. The cases Briles cites have no application to the present appeal.[6]

2. In Any Event, the $345,000 Is Well Within the Broad Discretion Permitted Arbitrators Under *Advanced Micro Devices*

Briles's attack on the arbitration award suffers from a second fundamental flaw—namely, that he does not acknowledge the broad discretion permitted arbitrators to fashion breach of contract awards. Briles suggests that if a court could not have awarded Culotti $345,000 for having been improperly excluded from the property, such award by the arbitrator necessarily also exceeded the arbitrator's authority. But as we now discuss, an arbitrator's authority to fashion remedies is far broader than a court's, and Briles has not shown that the arbitrator in this case exceeded that broad authority.

Our Supreme Court described the discretion permitted arbitrators to fashion remedies in *Advanced Micro Devices, supra*, 9 Cal.4th 362. That case concerned a breach of contract claim brought before an arbitrator by Advanced Micro Devices (AMD) against Intel. The arbitrator found Intel had breached its contractual obligations to AMD but that AMD's actual damages were "immeasurable;" he therefore awarded AMD a permanent license to certain Intel intellectual property. (*Id.* at pp. 369–371.) Over Intel's objection, the trial court confirmed the arbitrator's award. (*Id*. at p. 371.)

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[6] Briles's reliance on Civil Code sections 1671 and 3275 suffers from the same weakness. Both sections address liquidated damages penalties imposed by contract *pre-breach*—not, as here, damages awarded by an arbitrator *post-breach*.

The Supreme Court held that the trial court had correctly confirmed the arbitration award. It explained that fashioning remedies for a breach of contract or other injury "is not always a simple matter of applying contractually specified relief to an easily measured injury. . . . It may require . . . as in this case, finding a way of approximating the impact of a breach that cannot with any certainty be reduced to monetary terms." (*Advanced Micro Devices*, *supra*, 9 Cal.4th at p. 374.) The choice of remedy, then, "may at times call on any decisionmaker's flexibility, creativity and sense of fairness. In private arbitrations, the parties have bargained for the relatively free exercise of those faculties. Arbitrators, unless specifically restricted by the agreement to following legal rules, ' "may base their decision upon broad principles of justice and equity . . . ." [Citations.] . . . "The arbitrators are not bound to award on principles of dry law, but may decide on principles of equity and good conscience, and make their award *ex aequo et bono* [according to what is just and good]." [Citation.]' (*Moncharsh*, *supra*, 3 Cal.4th at pp. 10–11.) [Footnote omitted.] Were courts to reevaluate independently the merits of a particular remedy, the parties' contractual expectation of a decision according to the arbitrators' best judgment would be defeated." (*Id*. at pp. 374–375.) Accordingly, because a reviewing court is "not in a favorable position to substitute its judgment for that of the arbitrators as to what relief is most just and equitable under all the circumstances," arbitrators "have substantial discretion to determine the scope of their contractual authority to fashion remedies, and . . . judicial review of their awards must be correspondingly narrow and deferential." (*Id*. at pp. 375–376.) An arbitration award must be upheld by a court "so long as it was

even arguably based on the contract; it may be vacated only if the reviewing court is *compelled* to infer the award was based on an extrinsic source." (*Id.* at p. 381.)

In reaching this conclusion, the *Advanced Micro Devices* court specifically rejected the contention, advanced by Intel and adopted by the dissenting justices, that the potential remedies available to an arbitrator are limited to those that a court could award on the same claim. The high court explained that the dissent's approach "is inconsistent with the principles of contractual arbitration and with the agreement of the parties in this case. As already discussed, arbitrators are not generally limited to making their award ' "on principles of dry law." ' (*Moncharsh*, *supra*, 3 Cal.4th at p. 11.) For that reason, parties who submit their disputes to arbitration ' " 'may expect not only to reap the advantages that flow from the use of that nontechnical, summary procedure, but also to find themselves bound by an award reached by paths neither marked nor traceable and not subject to judicial review.' [Citations.]" ' [Citation.] [¶] . . . '[I]n the final analysis, "[a]rbitrators may do justice" and the award may well reflect the spirit rather than the letter of the agreement [citation]. . . . In other words *a court may not vacate an award because the arbitrator has exceeded the power the court would have*, or would have had if the parties had chosen to litigate, rather than arbitrate the dispute. Those who have chosen arbitration as their forum should recognize that arbitration procedures and *awards* often differ from what may be expected in courts of law.' " (*Advanced Micro Devices*, *supra*, 9 Cal.4th at pp. 388–389.)

Applying these principles, the *Advanced Micro Devices* court found that the arbitrator's choice of remedy did not exceed

his authority. The parties' arbitration agreement authorized the arbitrator to grant " 'any remedy or relief which the Arbitrator deems just and equitable and within the scope of the agreement' "—language the high court said "did not . . . restrict the arbitrator to remedies available in a court of law." (*Advanced Micro Devices*, *supra*, at 9 Cal.4th pp. 383, 389.) Accordingly, "[i]n light of the inherently flexible nature of equitable remedies, the principle of arbitral finality which forbids judicial inquiry into the legal correctness of the arbitrator's decisions on submitted issues, and the related principle that remedies available to a court are only the *minimum* available to an arbitrator (unless restricted by the agreement) . . . [¶] [w]e conclude the challenged portions of the arbitrator's award were within his authority to fashion remedies for a breach of contract." (*Id*. at pp. 390–391.)

Applying *Advanced Micro Devices* to the present case, we note that rule 24(c) of the JAMS Comprehensive Arbitration Rules (JAMS Rules), which the partnership agreement incorporated by reference, provides: "In determining the merits of the dispute, the Arbitrator shall be guided by the rules of law agreed upon by the Parties. In the absence of such agreement, the Arbitrator shall be guided by the rules of law and equity that the Arbitrator deems to be most appropriate. The Arbitrator may grant any remedy or relief that is just and equitable and within the scope of the Parties' agreement, including, but not limited to, specific performance of a contract or any other equitable or legal remedy."

The provision governing the remedies available in this case thus is nearly identical to the comparable provision in *Advanced Micro Devices*, which the Supreme Court said did not indicate an intent "to place any special restrictions on the arbitrator's

discretion to fashion remedies." (*Advanced Micro Devices*, *supra*, 9 Cal.4th at p. 384.) Accordingly, even if, as Briles contends, a court could not have based an award on considerations other than Culotti's actual damages, such an award nonetheless *is* within an arbitrator's broad equitable powers, so long as the award was "even arguably based on the contract." (*Id.* at p. 381.) Here, it unquestionably was: The award itself stated that Briles's actions in locking Culotti out of the property "was and still is a contractual breach of the Agreement," for which the arbitrator determined Culotti was entitled to compensation. Given the broad scope of the arbitrator's powers as articulated in *Advanced Micro Devices*, we cannot second-guess the arbitrator's determination.

Nor can we conclude, as Briles suggests, that the $345,000 award "bears a disproportionate relationship to any actual damages suffered by Culotti because of the access limitations, particularly since she did not seek *any* such damages." As we have said, Briles did not include a complete transcript of the hearing before the arbitrator in the appellate record; thus, we do not reach any conclusions about the damages Culotti sought or proved.

Finally, Briles does not grapple with *Advanced Micro Devices* in any meaningful way. He cites three cases for the proposition that the arbitrator's award exceeded his power, but none is persuasive. *Marsch v. Williams* (1994) 23 Cal.App.4th 238, 245 and *Luster v. Collins* (1993) 15 Cal.App.4th 1338, 1348 predate *Advanced Micro Devices* and, therefore, are of limited relevance. In any event, neither case addresses the issue before us—an arbitrator's power to award *damages*. (*Marsch v. Williams*, *supra*, at pp. 245–248 [arbitrator exceeded his powers

by appointing a receiver]; *Luster v. Collins*, *supra*, at pp. 1347–1350 [arbitrator exceeded his powers by ordering penalty for party's future failure to comply with arbitration award].) *O'Flaherty v. Belgum* (2004) 115 Cal.App.4th 1044, 1057 (*O'Flaherty*), postdates *Advanced Micro Devices*, but is distinguishable on its facts from the present case. In *O'Flaherty*, the arbitration agreement provided that the arbitrator " 'shall not have any power . . . to grant any remedy which is either prohibited by the terms of this Agreement, or not available in a court of law.' " (*O'Flaherty*, at p. 1097.) In contrast, as we have said, the partnership agreement in the present case gave the arbitrator broad authority to "grant any remedy or relief that is just and equitable." (JAMS Rules, Rule 24(c).)

DISPOSITION

The judgment is affirmed. Briles's motion to augment the record is denied. Culotti is awarded her appellate costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J. KALRA, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.