To be Argued by:
STEPHEN NEUWIRTH
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—First Department

TCR SPORTS BROADCASTING HOLDING, LLP,

Petitioner-Appellant,

– against –

WN PARTNER, LLC, NINE SPORTS HOLDING, LLC, WASHINGTON NATIONALS BASEBALL CLUB, LLC and THE OFFICE OF COMMISSIONER OF BASEBALL,

Respondents-Respondents,

– and –

THE COMMISSIONER OF MAJOR LEAGUE BASEBALL,

Respondent,

– and –

THE BALTIMORE ORIOLES BASEBALL CLUB and BALTIMORE ORIOLES LIMITED PARTNERSHIP, in its capacity as managing partner of TCR Sports Broadcasting Holding, LLP,

Nominal Respondents-Appellants.

Appellate Case Nos.: 2019-05390 2019-05458 2019-05459

BRIEF FOR RESPONDENT-RESPONDENT WASHINGTON NATIONALS BASEBALL CLUB, LLC

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PRELIMINARY STATEMENT

This Court ruled in 2017 that the parties' 2005 Telecast Agreement requires their telecast rights fees dispute for 2012-16 to be arbitrated before Major League Baseball's Revenue Sharing Definitions Committee (the "RSDC"). *See TCR Sports Broad. Holding v. WN Partner, LLC*, 153 A.D.3d 140 (1st Dep't 2017) (3-2 holding of the Court). The RSDC, composed of new members who did not participate in the original arbitration of the dispute in 2012, and advised by new outside counsel (Gregory Joseph, Esq.), conducted that arbitration in 2018, holding a two-day evidentiary hearing. The RSDC rendered a fifty-page written decision (the "Award") in April 2019, applying both of the respective valuation methodologies advocated by the parties to arrive at a result far closer to the rights fees proposed by the Orioles than by the Nationals.[1] Supreme Court (Cohen, J.) confirmed the Award.

The principal question on appeal is whether Supreme Court correctly confirmed the Award. The answer is YES. The Court of Appeals has held that "an arbitrator's rulings, unlike a trial court's, are largely unreviewable." *In re Falzone (New York Cent. Mut. Fire Ins. Co.)*, 15 N.Y.3d 530, 534 (2010), and that "[a]n arbitration award must be upheld when the arbitrator 'offer[s] even a barely

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[1] The Baltimore Orioles Baseball Club, Baltimore Orioles Limited Partnership, and TCR Sports Broadcasting Holding LLP are referred to herein collectively as the "Orioles," and the Washington Nationals Baseball Club LLC, WN Partner LLC, and Nine Sports Holding LLC are referred to collectively as the "Nationals," except where relevant to distinguish among them. *See* A.8.

colorable justification for the outcome reached.'" *Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 N.Y.3d 471, 479 (2006). Thus, "an arbitrator's award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice." *Id*. at 479-80. Under the applicable Federal Arbitration Act ("FAA"), *see TCR Sports Broad*. *Holding v. WN Partner LLC*, 2015 WL 6746689, at *4 (Sup. Ct. N.Y. Cnty. Nov. 4, 2015), *aff'd*, 153 A.D.3d 140 (1st Dep't 2017), the "'party moving to vacate an arbitration award has the burden of proof, and the showing required to avoid confirmation is very high.'" *U.S. Elecs., Inc. v. Sirius Satellite Radio, Inc.*, 17 N.Y.3d 912, 915 (2011) (citation omitted).

Here, Supreme Court's analysis was thorough and followed precedent. The Orioles' arguments, by contrast, are filled with mischaracterizations of the record and case law. And, as Justice Cohen found, the Orioles rehash and repackage, arguments previously rejected by Supreme Court and this Court following the first arbitration of the dispute.

First, the Orioles assert that the Nationals' February 2018 agreement to repay MLB's $25 million advance *before* the second RSDC hearing began (the "Prepayment Agreement") purportedly created evident partiality. This is baseless. As this Court previously found, MLB made the advance in 2013 with the Orioles' knowledge to facilitate settlement discussions between the parties. The Orioles

previously argued that having this advance outstanding rendered MLB and the RSDC biased against the Orioles, but both Supreme Court (then Justice Marks) and this Court rejected the Orioles' contention, with this Court noting that the Nationals had offered to post a bond securing repayment of the advance to MLB regardless of the RSDC's decision. *See TCR Sports*, 2015 WL 6746689 at *8-9 , *aff'd*, 153 A.D.3d at 142-43, 158 (plurality). That bond would have allowed repayment of the advance *after* the RSDC rendered its award. The Prepayment Agreement the Orioles now attack required the Nationals to repay the advance *before* the RSDC hearing started. As Justice Cohen observed, "the Loan Prepayment Agreement if anything *alleviated* the substantive concerns expressed by the Orioles in connection with the First Award – *i.e.*, that the loan purportedly gave MLB a financial stake in the *outcome* of the arbitration," and instead ensured "MLB would be fully repaid before the second arbitration, removing any lingering concerns that MLB might have a financial interest in the outcome." A.22 (emphasis in original). Nor did the Prepayment Agreement create evident partiality in the RSDC's scheduling or recusal decisions: the second RSDC arbitration "was delayed for months at the Orioles' request and over the Nationals' objection," A.24, and the Orioles' request in 2018 that the RSDC recuse itself was "a rehash" of the rejected argument "made in connection with the first litigation," A.23.

As Justice Cohen observed, "the notion that any purported indirect and modest financial interest" from the Prepayment Agreement would dissuade the RSDC "from recusing itself despite two court decisions finding that it did not have to do so, does not come close to satisfying the heavy burden of proving evident partiality." A.25. Indeed, establishing evident partiality under FAA § 10(a)(2) is "a stringent standard" that "could not be satisfied by a mere appearance of bias," *U.S. Elecs.*,17 N.Y.3d at 914. Evident partiality is only "found where a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration." *797 Broadway Grp., LLC v. BCI Const., Inc.*, 59 N.Y.S.3d 657, 661-62 (Sup. Ct. N.Y. Cnty. 2017) (citation omitted).

Second, the Orioles assert that the RSDC was evidently partial because it denied certain of the Orioles' discovery requests. But the FAA does not allow parties to relitigate issues previously submitted to and decided by the arbitrator, *Glen Rauch Securities, Inc. v. Weinraub*, 2 A.D.3d 301, 302 (1st Dep't 2003) (courts "afford wide discretion to arbitrators in procedural matters"); *Nat'l Football League Mgmt. Council v. Nat'l Football League Players Ass'n*, 820 F.3d 527, 545 (2d Cir. 2016) ("It is well settled that procedural questions that arise during arbitration … are left to the sound discretion of the arbitrator and should not be second-guessed by the courts"), and arbitrators have "broad discretion to control discovery," *Landmark Ventures, Inc. v. InSightec, Ltd.*, 63 F. Supp. 3d 343, 352 (S.D.N.Y. 2014); *Matter*

of Merrill Lynch, Pierce, Fenner & Smith, 198 A.D.2d 181, 181 (1st Dep't 1993) (arbitrators' denial of document request not misconduct). This is true here, where the Orioles knew in entering the 2005 Agreement that "there are no . . . discovery rights" in the RSDC. 153 A.D.3d at 156 (plurality). *See also* A.28-29.

Moreover, the RSDC here *granted* significant discovery to the Orioles, including all related-party telecast agreements evaluations from 2012-2016 that resulted in RSDC reports; RSN distribution and subscriber data; and communications related to the 2005 Agreement up until its execution. *See* A.600-07.

Justice Cohen also found the Orioles' complaint that the RSDC should have allowed discovery of "all" communications between MLB and the RSDC, to explore some purported influence of MLB over the proceedings, to be just a "repackaged version of arguments that were soundly rejected" by Supreme Court (Justice Marks) in 2015 and by this Court in 2017. A.25. Not only is such unsubstantiated speculation insufficient to support vacatur, *see U.S. Elecs*., 17 N.Y.3d at 914-15, but here the parties knowingly selected "the RSDC, which all parties understood is composed of MLB-chosen executives from other MLB teams – that is, 'industry insiders, with specialized expertise.'" A.25 (quoting 153 A.D.3d at 160 (plurality)). And the RSDC's retention of outside counsel *reduced* MLB's role in the second arbitration. A.26. Nor, as Supreme Court found, are public statements by the MLB

Commissioner "sufficient to throw into doubt the fairness of a process that was handled and resolved by the RSDC with obvious thoroughness and care." A.27. Indeed, this Court previously rejected the Orioles' arguments based on many of the same public statements. 153 A.D.3d at 158-59 (plurality).

Third, the Orioles' suggestion that the RSDC "exceeded" its powers by purportedly misinterpreting the parties' Agreement is baseless. The question under the FAA is "whether the arbitrators had the power, based on the arbitration agreement, to *reach* a certain issue, not whether the arbitrators *correctly decided* that issue." *Nat'l Union Fire Ins. Co. v. Pittsburgh, PA.*, 2005 WL 857352, at *4–5 (S.D.N.Y. Apr. 12, 2005) (quotation omitted; emphases added). Here, the 2005 Agreement explicitly empowers the RSDC to determine the "fair market value" of the Nationals' rights fees using "the RSDC's established methodology for evaluating all other related party telecast agreements in the industry." The RSDC did precisely that: it decided the meaning of the term "established methodology" in the Agreement, and then applied that methodology to determine the fair market value of the Nationals' rights fees for 2012-16. A.30-31.

The Orioles also incorrectly assert the 2019 Award is the "same" as the 2014 award. Br. 52.[2] The 2019 Award in fact employed a different methodology and arrived at a different result. The 2014 award assumed different operating margins,

[2] Citations to the Orioles' opening appeal brief are in the form "Br. __."

compare A.527-28 to A. 1804, and different methodologies. This led to different rights fees determinations. For example, the 2014 award calculated 2016 telecast rights fees of $66.7 million (A.533), over $4 million higher than the Award's calculation of $62.4 million for 2016 (A.1815). *See* pp. 52-54, *infra.*

Fourth, the Orioles yet again ask this Court to remand the parties for a *third* arbitration before a *different* arbitral forum. But, as this Court previously held, the Orioles agreed in the Telecast Agreement that the RSDC would have sole authority to determine the Nationals' rights fees in the event of a dispute. 153 A.D.3d at 155-56 (plurality). Under the FAA, "courts must rigorously enforce arbitration agreements according to their terms, including terms that specify *with whom* the parties choose to arbitrate their disputes and the rules under which that arbitration will be conducted." *Am. Express Co. v. Italian Colors Rest*., 133 S. Ct. 2304, 2309 (2013) (internal quotations and citations omitted) (emphasis in original). New York strictly adheres to this principle. Courts should not direct parties to "arbitrate in a forum other than that specified in their agreement, even though permitting the choice of a different forum might seem fairer or more suited to the needs of a particular party." *In re Salvano v. Merrill Lynch, Pierce, Fenner & Smith*, 85 N.Y.2d 173, 181-82 (1995). As this Court observed, "[b]ecause arbitration is a matter of contract, 'the parties to an arbitration can ask for no more impartiality than inheres

in the method they have chosen.'" 153 A.D.3d at 155 (plurality) (quoting *N.F.L. Mgmt. Council*, 820 F.3d at 548).

Finally, the Orioles assert that Supreme Court purportedly "modified" the RSDC's award by entering a monetary judgment. But the Award in fact calculated specific monetary amounts for the "fair market value" of the Nationals' broadcast rights for each year from 2012-2016, and set forth the exact portions of those amounts MASN previously paid in each of those years. *See* p. 54-55, *infra.* Supreme Court merely performed the ministerial calculation of subtracting rights fees MASN already paid from the rights fees awarded under the Agreement. As Supreme Court explained, "[t]he RSDC made its determination, which clearly was a monetary award of what 'shall be paid' to the Nationals, down to the single dollar, subject only to deducting the amount previously paid by MASN to the Nationals in respect of the rights fees." A.31. This was entirely proper: when "[a]ll that needs to be done are ministerial acts or arithmetic calculations," trial courts should confirm the award and perform the calculations themselves. *Matter of Civil Serv. Employees Ass'n, Inc., Local 1000, AGSCMS, AFL-CIO (State of New York)*, 223 A.D.2d 890, 890-93 (3d Dep't 1996) (reversing Supreme Court's remand to arbitrators to perform calculations); *Matter of Vermilya (Distin)*, 157 A.D.2d 1030, 1030–31 (3d Dep't 1990) (similar); *Morgan Guar. Tr. Co. of N.Y. v. Solow*, 114 A.D.2d 818, 821–22 (1st Dep't 1985), *aff'd*, 68 N.Y.2d 779 (1986) (no need for remand to perform

calculations "[w]here the formulae for the computations are so clear and specific that the determination of the amounts owing is merely an accounting calculation") (internal citation omitted).

Finally, and it is worth emphasizing, New York courts consistently apply stringent standards for vacating arbitrator awards. *See, e.g., U.S Elecs., Inc*., 17 N.Y.3d at 915; *Wien & Malkin*, 6 N.Y.3d at 479-80; *Daesang Corp. v. NutraSweet Co*., 167 A.D.3d 1, 19 (1st Dep't 2018); *Tullett Prebon Fin. Servs. v. BCG Fin., L.P.*, 111 A.D.3d 480, 482 (1st Dep't 2013); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Kuang Ming Chan*, 38 A.D.3d 355, 356 (1st Dep't 2007); *Roffler v. Spear, Leeds & Kellogg*, 13 A.D.3d 308, 309 (1st Dep't 2004).

The Orioles have not come close to meeting this heavy burden. Confirmation of the Award and entry of judgment should be affirmed.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

1) Whether the Prepayment Agreement establishes evident partiality under the FAA.

Supreme Court correctly answered "no."

2) Whether the RSDC's denial of a discovery request for "all" communications between MLB and the RSDC establishes evident partiality under the FAA.

Supreme Court correctly answered "no."

3) Whether the RSDC denied the Orioles a fair hearing by denying a discovery request for third-party communications that post-date the 2005 Agreement.

Supreme Court correctly answered "no."

4) Whether the RSDC exceeded its powers under the 2005 Agreement by interpreting the 2005 Agreement and applying its "established methodology" to determine the Nationals' rights fees for the 2012-2016 period.

Supreme Court correctly answered "no."

5) Whether Supreme Court erred by applying the 2005 Agreement as written, rather than reforming the agreement and directing a new hearing before a different arbitral forum.

Supreme Court correctly enforced the Agreement.

6) Whether Supreme Court properly entered final judgment on the RSDC's monetary award.

Supreme Court properly entered a monetary judgment reflecting the amount owed on the RSDC's monetary award.

COUNTERSTATEMENT OF FACTS

A. The Telecast Agreement

In 2005, MLB owned the Nationals, the former Montreal Expos team the league had moved to Washington, D.C. In March 2005, MLB, the MLB-owned Nationals, MASN (the Orioles-owned regional sports network that until then had

been broadcasting only Orioles' games) and the Baltimore Orioles Limited Partnership ("BOLP") entered the Telecast Agreement. A.535.[3]

The Telecast Agreement has provided the Orioles with many valuable benefits. MASN received the exclusive right to televise *both* Orioles *and* Nationals games. The Orioles retained complete management control of MASN as well as supermajority ownership – beginning with a 90% ownership stake that decreases by 1% per year until 2032, when the Orioles will have a final stake of 67%. A.543. The Nationals received only a minority stake in MASN, starting with 10% in 2010, and growing 1% per year to until reaching 33% in 2032. A.543. This means the Orioles are entitled to a supermajority of MASN's profit distributions. A.543.

The Agreement also set forth a fixed schedule of below-market fees that MASN would pay the Nationals from 2005-11 for the right to broadcast the club's games. A.541. This was a massive benefit to the Orioles: the lower the rights fees (for which the Orioles would earn 50 cents on every dollar, given that the Orioles and the Nationals would be paid the same rights fees), the higher MASN's profits (of which the Orioles would receive a supermajority). In addition, MLB through the Agreement "guarantee[d] to BOLP a minimum franchise sales price" of $365 million – more than double the price the Orioles' current owners paid to purchase

[3] This Telecast Agreement entered in March 2005, with it own dispute resolution provisions, is a separate agreement from the Partnership Agreement that certain of the parties entered in September 2005.

the Club in 1993, and more than the Orioles' total franchise value as of 2005. *See* A535, A.1790.

At the same time, the 2005 Agreement provides that beginning in 2012, the rights fees paid to the Nationals shall be determined for "successive five-year period[s]" based on "the fair market value of the telecast rights." A.541-42. If a dispute arises regarding the fair market value of the rights fees, the 2005 Agreement requires negotiation and mediation, and then (if necessary) arbitration exclusively before the RSDC, a standing MLB committee composed of MLB Club owners and executives that regularly determines the market value of broadcast rights fees:

> 2.J.3. Appeal: In the event that the Nationals and/or the Orioles and [MASN] are unable to timely establish the fair market value of the Rights by negotiation and/or mediation …, then the fair market value of the Rights shall be determined by the Revenue Sharing Definitions Committee ("RSDC") using the RSDC's established methodology for evaluating all other related party telecast agreements in the industry.

A.542. The Agreement further provides that "[t]he fair market value of the rights established pursuant to" Section 2.J.3 "shall be final and binding on the Nationals and [MASN], and the Nationals and [MASN] may seek to vacate or modify such fair market valuation as established by the RSDC only on the grounds of corruption, fraud or miscalculation of figures[.]" A.542.

In 2006, MLB sold the Nationals to the team's current owners.

B. The 2012 Arbitration

In late 2011, the Nationals and MASN failed to agree on the fair market value of the Nationals' rights for the 2012-2016 period. The parties waived mediation and submitted the dispute to the RSDC. *TCR Sports*, 2015 WL 6746689 at *2. The RSDC was then composed of executives from the New York Mets, the Pittsburgh Pirates, and the Tampa Bay Rays. *Id*. The Nationals were represented in the proceedings by Proskauer Rose LLP. *Id*.

The RSDC held a hearing in April 2012, with MLB personnel providing administrative and procedural support. *Id*. at *3. The RSDC reached its decision by mid-2012, and the parties were told the approximate amount MASN owed the Nationals – but MLB delayed issuance of a formal award to facilitate negotiations between the parties.

MLB in 2013 advanced the Nationals $25 million to encourage the Nationals' participation in the settlement talks. *Id*. at *3-4. The advance addressed shortfalls in 2012 and 2013 between rights fees MASN was paying the Nationals and the amount that would be owed under the RSDC's determination that had been informally reported to the parties. *Id*. at *3. The terms of the advance stated that "if the RSDC issues a decision that covers 2012 and/or 2013, any payments from MASN otherwise due to the Nationals will be made first to the Commissioner's Office to cover" the advance, and "[a]ny excess amounts would go to the Nationals."

A.1134-35. The documentation does not require the Nationals to repay the advance. *See* Index No. 652044/2014, Dkt. No. 347.

C. Prior Court Proceedings

After negotiations failed, the RSDC issued its award in 2014. MASN filed a petition in Supreme Court seeking to vacate the award under the FAA. 2015 WL 6746689 at *4. On November 4, 2015, Supreme Court (Marks, J.) granted MASN's petition, but *solely* on grounds related to the Nationals' arbitration counsel, Proskauer, having concurrently represented MLB and certain interests of the RSDC members. *Id*. at *12. Supreme Court rejected the Orioles' other arguments, including that MLB's $25 million advance to the Nationals purportedly created evident partiality. *Id*. at *8-9. Justice Marks concluded that "MASN and the Orioles have not demonstrated that the circumstances of the advance raise any serious questions about the fairness of the arbitration process," explaining that "the Court cannot see how MASN or the Orioles were actually prejudiced by MLB's financial arrangement with the Nationals, even assuming there was insufficient disclosure of the precise nature of the arrangement." *Id*. at *8-9. The court explained that "the advance was not undertaken in secret" (*id*. at *9), and that "MASN and the Orioles were aware that an advance would be made" (*id*. at *4).

Justice Marks also held MLB and the RSDC did not engage in any prejudicial misconduct, rejecting the Orioles' claims that MLB improperly influenced the outcome of the proceedings:

> MLB provided the sort of support that the parties must necessarily have expected when they entered into the Agreement and there is no evidence that MASN and the Orioles had any expectation that the three Club representatives, when acting in their capacity as members of MLB's standing committee, would eschew assistance from MLB's support staff to the extent customary and appropriate.

Id. at *7. The court held "Petitioners have not shown any denial of fundamental fairness based on MLB's support role or the informality of the procedures used." *Id*.

Justice Marks also rejected the Orioles' arguments that the RSDC's interpretation of the 2005 Agreement exceeded the scope of the arbitrators' authority or constituted manifest disregard of the law, and that MLB and the RSDC engaged in prejudicial misconduct by denying the Orioles' discovery requests. *Id*.

Justice Marks also denied the Orioles' request to remand the matter for rehearing before a different arbitral body, explaining that if the Nationals retained new counsel who "did not concurrently represent MLB or the individual arbitrators and their clubs," the parties could "return to arbitration before the RSDC, however currently constituted, pursuant to the parties' Agreement." *Id*. at *13 n.21.

This Court affirmed Supreme Court's vacatur decision solely on the basis of Proskauer's involvement in the arbitration. 153 A.D.3d 140. And this Court also affirmed Supreme Court's denial of the Orioles' request for an order remanding the

parties for a rehearing in a different arbitral forum. *Id*. at 142-43 (per curiam). This Court rejected the Orioles' argument that MLB's outstanding $25 million advance to the Nationals rendered MLB and the RSDC biased against the Orioles. The plurality observed that "[t]o allow the Orioles to now use the advance, which maintained the status quo, as a sword to disqualify the RSDC defies logic and mischaracterizes MLB's efforts to have the parties negotiate their differences without undue financial pressure on either side." *Id*. at 158. The plurality noted that "the Nationals have offered to post a bond to guarantee repayment of the advance to MLB regardless of the outcome of the arbitration." *Id*.

The plurality rejected the "dissent's position that the new panel will remain puppets of MLB," characterizing it as "pure conjecture" falling short of the standard requiring "something overt, some misconduct the part of an arbitrator[s], and not simply on [their] interest in the subject matter of the controversy or [their] relationship to the party who selected [them]." *Id*. at 157 (plurality) (brackets in original). The plurality observed that if the RSDC were to be disqualified "based on the mere possibility that MLB will unduly influence it, it would eliminate the viability of any future arbitration by any MLB club before the RSDC, and place into question the viability of industry-insider arbitrations in general." *Id*. Justice Kahn joined the plurality in holding the new arbitration must be before the RSDC.

The Orioles filed a notice of appeal to the Court of Appeals, which that Court dismissed for lack of jurisdiction. *In re TCR Sports Broad. Holding, LLP v. WN Partner, LLC*, 30 N.Y.3d 1005 (2017). The Orioles then moved this Court for leave to appeal, which the same panel that rendered the underlying decision unanimously denied. *In re TCR Sports Broad. Holding, LLP v. WN Partner, LLC*, 2018 WL 457101 (1st Dep't Jan. 18, 2018).

D. The 2018 Arbitration

1. Pre-Hearing Procedures

In 2018, the parties had a new arbitration before the RSDC, which was composed entirely of new members: the principal owner of the Milwaukee Brewers, and the presidents of the Seattle Mariners and Toronto Blue Jays. A.1816. The Nationals were represented at the hearing by new counsel (Quinn Emanuel) that are not representing MLB, the RSDC members or their Clubs. A.555.

With the Orioles continuing to argue that the outstanding $25 million advance compromised the impartiality of MLB and the RSDC, *see* A.563 ("[i]t is intolerable for MLB to have skin in a game refereed by an MLB lawyer and an MLB committee"), the Nationals on February 9, 2018 agreed to repay MLB the $25 million advance, with interest, ten days prior to the scheduled start of the new RSDC arbitration (the "Prepayment Agreement"). A.559-60. The money would be returned to the Nationals if the hearing did not go forward when scheduled, but of

course the Nationals would again need to repay the amount in advance of a new hearing date once scheduled. A.559. The Prepayment Agreement did not supersede the terms of the original advance. A.559. The Nationals informed the Orioles of the Prepayment Agreement on March 12, 2018. A.558.

The Orioles asked the RSDC to recuse itself, including based on the original advance and the Prepayment Agreement. A.566-71, A.573-76. On May 10, 2018, the RSDC issued a comprehensive written decision formally rejecting this request. A.577-80. The RSDC noted that the Orioles' "grounds articulated for recusal … were largely rejected by the First Department as grounds for disqualification of the RSDC," and that "[t]he First Department also granted the Nationals' motion to compel arbitration before the RSDC." A.578. The RSDC noted that now the advance "will be repaid before the hearing in this matter, thereby mooting any concerns that the fact this loan remained outstanding would influence the outcome of this proceeding or give MLB an economic stake in the outcome of this proceeding." A.578. The RSDC explained that none of its members were "aware of any fact or circumstance, past or present, that would call into question his independence or give rise to reasonable doubts about his impartiality," that "[n]o member of the RSDC has any personal interest in the outcome of this proceeding," and that no RSDC member had "any personal relationship with any of the parties beyond the normal interactions that occur in connection with MLB business," with

two immaterial exceptions favoring the Orioles (the Mariners' president attended the same school as members of the Angelos family that owns the Orioles, and a sister-in-law of the Brewers' principal owner is a bankruptcy attorney at Sidley Austin, one of the firms representing the Orioles before the RSDC). A.577-78.[4]

The RSDC, advised by outside counsel Joseph Shenker of Sullivan & Cromwell ("S&C"), initially scheduled the second arbitration for June 14, 2018. A.583. The Orioles objected that S&C was "not an impartial voice" on account of its involvement as counsel to MLB during the parties' settlement negotiations in 2015. A.564. S&C then advised the parties that "[w]hile there is no legal or factual basis to support the assertions that have been made regarding Sullivan & Cromwell, in order to eliminate any controversy, Sullivan & Cromwell has decided to withdraw." A.619.

[4] The Orioles later argued that the Nationals' submission to the RSDC of MLB Commissioner Manfred's affirmations from earlier Supreme Court proceedings purportedly created another ground for RSDC recusal. A.661-62. The RSDC denied that request, noting that "the Affirmations have been a matter of public record for well over 3 years." A.662. The RSDC stated that, regardless, the content of the affirmations were "hearsay in this proceeding and will not be considered for the truth of the matter asserted." A.662. The RSDC observed that the First Department had already rejected the Orioles' argument that a reconstituted RSDC would be "insufficiently neutral" because of these affirmations. A.662.

On March 20, 2018, the Orioles requested a two-month adjournment to August 2018. A.572. The RSDC granted the Orioles' request over the Nationals' objection, adjourning the hearing to August 15-16, 2018. A.615.

On May 7, 2018, Gregory Joseph of Joseph Hage Aaronson LLC informed the parties he would be representing the RSDC in the proceeding. A.621-22. On May 23, 2018, the Orioles requested a further two-month adjournment of the August hearing date. A.623. On June 5, 2018, the RSDC – again over the Nationals' objection – granted the Orioles' request, now adjourning the hearing until to November 15-16, 2018. A.642.

2. Discovery Requests

Before the hearing, the RSDC permitted each party to submit requests for information to MLB, setting a deadline of March 7, 2018. A.584. The Nationals complied with that deadline (A.588-89), but the Orioles did not, submitting numerous requests on March 29, 2018 (A.590-99.)

The RSDC did not treat the Orioles' late requests as untimely. On May 10, 2018, the RSDC *granted* many of the Orioles' requests, authorizing disclosure of all related-party telecast agreement evaluations from 2012-16 that resulted in RSDC reports, RSN distribution and subscriber data, and discovery related to the 2005 Agreement up until its execution. *See* A.600-07.

The RSDC also denied some of the Orioles' requests as irrelevant or seeking information that was nonexistent, shielded by privilege, or already produced. A.953-58. For example, the RSDC denied discovery into "all" communications between the RSDC and MLB, finding that the "stated reason" for the discovery sought was "not to explore the merits of this dispute but rather to explore the impartiality of the RSDC." A.955.[5] The RSDC found the Orioles had failed to make any "threshold showing of a lack of independence or impartiality on the part of any member of the RSDC." *Id.* The RSDC also noted that the Orioles "previously litigated—in the First Department—MLB's involvement in the prior proceeding and in this proceeding," and that "the parties accepted the involvement of MLB in the RSDC proceedings when they agreed to Section 2.J.3 of the Agreement." *Id*.

After the Orioles renewed the discovery requests, the RSDC on August 3, 2018, issued a comprehensive written decision denying those requests, including for "[a]ll documents that report, describe, summarize, analyze, discuss or comment on Section 2.J.3" of the 2005 Agreement. A.600-07. The RSDC explained that the Orioles' "document request for 'all' other documents that might bear on this issue is both overly broad and, at best, a fishing expedition." A.603. The RSDC also

[5] The RSDC noted MASN's counsel acknowledged these communications were not "germane to the arbitrators' mandate and the determination of the fair market value of the Nationals' telecast rights fees using the contractually-stipulated methodology." A.578.

rejected the Orioles' request for valuations that were not appealed to the RSDC or did not result in the issuance of an RSDC report, finding that the Orioles had "made no showing as to why or how any other papers were or are 'particularly critical'" and that the numerous RSDC reports already produced to the Orioles are "the best evidence of how the RSDC used its established methodology to evaluate all other related party telecast agreements." A.601-02.

3. The RSDC Hearing

The RSDC held a two-day evidentiary hearing on November 15-16, 2018. A.1769. The RSDC granted the Orioles' request for hearing procedures that went well beyond the RSDC's normal informal approach, permitting opening statements, sworn witnesses, direct and cross-examinations, closing arguments, transcription by a professional court reporter, and written post-hearing submissions. A.664-68.

Ten days before the hearing, the Nationals repaid the $25 million advance plus interest. A.556.

Throughout the proceedings, the Orioles asserted the RSDC should decide "fair market value" by applying a bottom-up calculation prepared by Bortz Media and Sports Group ("Bortz analysis"). A.1778-79, A.1786-87, A.1794-95, A.1571-1628, A.1629-69, A.1670-1708. Applying the Bortz analysis, the Orioles asserted the Nationals were entitled to $39.5 million annually for rights fees. A.1694. The Nationals argued the RSDC should apply the methodology that MLB had provided

to the parties in late 2011, before the first arbitration – substantively the same as the methodology the RSDC has applied to all related-party telecast-rights transactions since the 2012 revenue-sharing year (the first season covered by the arbitration at issue here). A.1779-80, A.1788-89, A.1817-66, A.1867-1924, A.1925-64. That methodology at the time drew no objections from any party (A.1870, A.1872) and was applied by the RSDC in its 2014 award (A.1872). That methodology requires considering both an RSN's income statement and comparable rights-fee transactions executed by similarly-situated MLB Clubs, among other factors. A.1797. Under this methodology, the Nationals' expert calculated that the fair market value of the Nationals' rights for 2012-16 was approximately $95 million per year. A.1865.

The RSDC's Thirty-Fourth Report from 2012 represents a continuation of the established methodology set forth in the 2011 letter to the parties. The Nationals' expert testified that the factors set forth in the Thirty-Fourth Report are substantively the same as those described in the 2011 letter, and that his valuation would be the same under either analysis. A.1942.

At the hearing, the RSDC heard live testimony from two fact witnesses (both called by the Orioles) and four experts (two from each side). *See* A.1767-1816.

4. The RSDC's 2019 Arbitration Award.

After receiving post-hearing submissions from the parties in December 2018, the RSDC issued its Award on April 15, 2019. A.1816. The RSDC considered "all

of the files, records and proceedings herein, including the testimony presented at the hearing, the parties' expert reports and witness statements, the voluminous exhibits offered into the record, and the parties' pre- and posthearing briefs and other submissions," as well as "the experience of the Committee's members." A.1769. The Award included a fourteen-page discussion applying Maryland law, finding that the term "established methodology" in the 2005 Agreement is ambiguous and therefore considering extrinsic evidence from both sides. A.1786-1799. The RSDC concluded the term "established methodology" "refers to a methodology that the RSDC uses for all other telecast agreements at the time that license fees are determined[.]" A.1795. The RSDC found "that the applicable methodology is the methodology set forth in the 2011 Letter" that MLB had provided to the parties, which is "substantially the same as that set forth in the [RSDC's] 34th Report." A.1795. The RSDC held the applicable methodology "requires that the Committee consider both a bottom-up, Bortz-style analysis and look at comparable teams' transactions" in telecast-rights deals. A.1797. The RSDC then used the results of both analyses, A.1814-15, and awarded the following rights fees:

Year	**License Fee**
2012	$54,878,272.63
2013	$57,767,546.52
2014	$60,410,594.11
2015	$61,363,965.13
2016	$62,414,285.75
Average Annual Value:	$59,366,932.83

A.1815. The Award also set forth that MASN previously paid the Nationals rights fees of $34.0 million for 2012, $36.6 million for 2013, $39.3 million for 2014, $42.0 million for 2015, and $45.7 million for 2016. A.1776.

E. Supreme Court Proceedings

The Nationals moved to confirm the Award. On August 22, 2019, following briefing and oral argument, Supreme Court confirmed the Award. A.33. Supreme Court rejected each of the Orioles' bases to vacate, as well as the Orioles' request to remand for a new arbitration in a non-MLB forum.

Supreme Court ruled the Orioles failed to establish "evident partiality," explaining that "the Orioles' current arguments here are, as the Nationals assert, rehashed versions of arguments that were rejected by Judge Marks and not disturbed on appeal." A.21. Supreme Court noted "[e]ven if Judge Marks' decision is not deemed to be binding law of the case with respect to those arguments, the Court independently finds his analysis to be persuasive as to the closely analogous issues presented here." A.21.

Supreme Court rejected the Orioles' argument that the Prepayment Agreement was a "secret" or created a "glaring conflict of interest." A.21-25. Rather, that agreement "if anything *alleviated* the substantive concerns expressed by the Orioles in connection with the First Award – *i.e.*, that the loan purportedly gave MLB a financial stake in the *outcome* of the arbitration." A.22 (emphases in

original). The Prepayment Agreement, which returned the money to MLB before the start of the arbitration, did "one better" than the bond the Nationals offered before this Court, which would have resulted in repayment to MLB *after* issuance of an RSDC award. A.22. Supreme Court rejected the Orioles' argument that the Prepayment Agreement disincentivized the RSDC from acceding to the Orioles' recusal demands, given that the RSDC was "mandated to be the forum under the 2005 Agreement." A.23-24. Supreme Court rejected the Orioles' argument that the Prepayment Agreement created a conflict of interest, explaining that "nothing in the Prepayment Agreement suggested MLB could 'lose $25 million' if the RSDC decided to recuse itself from the arbitration. At most, MLB would lose the benefit of receiving a lump sum payment rather than being repaid under the original terms of the loan." A.24. The court concluded:

> the notion that any purported indirect and modest financial interest there might be in receiving a lump sum payment in connection with repayment of the Nationals' debt, in order to dissuade the RSDC (who came from three of thirty MLB teams) from recusing itself despite two court decisions finding that it did not have to do so, does not come close to satisfying the heavy burden of proving evident partiality.

A.25.

Third, Supreme Court rejected the Orioles' claim of "evident partiality" based on an alleged failure to disclose MLB's purported role in the arbitration, finding "this is a repackaged version of arguments that were soundly rejected by Judge Marks." A.25. Supreme Court explained the parties "understood" the RSDC "is

composed of *MLB-chosen* executives from other MLB teams – that is, 'industry insiders, with specialized expertise,'" and that, in any event, the evidence showed that MLB had a smaller role in the second arbitration than the first arbitration for which Justice Marks found no issue with MLB's involvement. A.25-26 (emphasis in original). Supreme Court also rejected claims the Commissioner's "stray public comments" showed evident partiality: "The Court does not believe that public statements such as those referenced by the Orioles are sufficient to throw into doubt the fairness of a process that was handled and resolved by the RSDC with obvious thoroughness and care." A.26-27.

Supreme Court rejected arguments that the RSDC's denial of certain discovery requests by the Orioles meant there had not been a fair hearing under FAA Section 10(a)(3). A.27-29. Recognizing that "[a]rbitrators are properly given broad discretion with respect to the scope of discovery," Supreme Court noted "the 2005 Agreement did not provide a right to *any* discovery in a dispute regarding rights fees." A.28 (emphasis in original). Moreover, "[t]he record shows that the RSDC considered the Orioles' various discovery requests and rejected them in a formal, reasoned order on the ground that they did not relate to the merits of the dispute, but instead they were intended to explore the impartiality of the RSDC." A.28-29.

Supreme Court held the RSDC did not exceed its powers. A.29-30. The court found that "the RSDC obviously had the authority to consider the interpretation of

relevant language in the agreement and the application of the facts to that language," and that "[t]he Orioles' arguments with respect to the RSDC's misapplication of Maryland law do not come close to the required showing that the RSDC exceeded its powers or showed manifest disregard for the law." A.30.

Supreme Court found the Orioles' remaining arguments "mainly, sub-arguments" of what it had already considered "to be without merit." *Id*.

Finally, Supreme Court rejected the Orioles' claim that the Award was "declaratory," finding it "constitutes a monetary 'sum awarded' upon which the court may grant interest." A.30. Justice Cohen explained: "The RSDC made its determination, which clearly was a monetary award of what 'shall be paid' to the Nationals, down to the single dollar, subject only to deducting the amount previously paid by MASN to the Nationals in respect of the rights fees." A.31. The court on November 14, 2019 directed the parties to submit a proposed judgment for "the amount of the television rights fees set forth on page 48 of the April 15, 2019 Second Award (NYSCEF Doc. No. 813) minus the television rights fees already paid to the Nationals for the same relevant period, directing the Clerk to calculate statutory interest on the net amount from April 15, 2019 through the date of judgment." A.39. The parties did so, and judgment was entered in favor of the Nationals on December 9, 2019 in the amount of $99,203,339.14, plus statutory interest running from April 15, 2019 through the date of the judgment, in the amount of $5,821,741.16. A.90.

STANDARD OF REVIEW

"[A]n arbitrator's rulings, unlike a trial court's, are largely unreviewable." *In re Falzone*, 15 N.Y.3d at 534. "It is well settled that judicial review of arbitration awards is extremely limited. An arbitration award must be upheld when the arbitrator 'offer[s] even a barely colorable justification for the outcome reached.'" *Wien & Malkin*, 6 N.Y.3d at 479-80. "[A]n arbitrator's award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice." *Id*.

There is no dispute the FAA applies here. *See TCR Sports*, 2015 WL 6746689 at *4, *aff'd*, 153 A.D.3d 140. Under the FAA, a court may vacate an arbitration award where (1) "there was evident partiality or corruption in the arbitrators," (2) "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 (3) "where the arbitrators exceeded their powers." 9 U.S.C. § 10(a). For each of these potential grounds, however, the "'party moving to vacate an arbitration award has the burden of proof, and the showing required to avoid confirmation is very high.'" *U.S. Elecs., Inc.*, 17 N.Y.3d at 914-15 (quoting *Ecoline, Inc. v. Local Union No. 12 of Int'l Ass'n of Heat & Frost Insulators & Asbestos Workers, AFL-CIO*, 271 F. App'x 70, 72 (2d Cir. 2008)).

Under the FAA, confirmation of an arbitration award is reviewed "de novo to the extent it turns on legal questions, and we review any findings of fact for clear error." *Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 388 (2d Cir. 2003); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 947–48 (1995) (same).

ARGUMENT

I. SUPREME COURT CORRECTLY RULED THE ORIOLES FAILED TO ESTABLISH EVIDENT PARTIALITY

Establishing evident partiality under FAA § 10(a)(2) is "a stringent standard" that "could not be satisfied by a mere appearance of bias." *U.S. Elecs.,*17 N.Y.3d at 914. Evident partiality is only "found where a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration." *797 Broadway Grp.*, 59 N.Y.S.3d at 661-62 (citation omitted); *U.S. Elecs.*, 17 N.Y.3d at 915 (similar)*; Areca, Inc. v. Oppenheimer & Co.*, 960 F. Supp. 52, 57 (S.D.N.Y. 1997) (rejecting vacatur where petitioners "had not come forward with any direct and definite evidence of partiality").

A. Supreme Court Correctly Found That The Prepayment Agreement Does Not Establish Evident Partiality

Supreme Court rejected the Orioles' challenges to the Prepayment Agreement, holding that this agreement "if anything *alleviated* the substantive concerns expressed by the Orioles in connection with the First Award – *i.e.*, that the loan purportedly gave MLB a financial stake in the *outcome* of the arbitration,"

because "[u]nder the agreement, MLB would be fully repaid *before* the second arbitration, removing any lingering concerns that MLB might have a financial interest in the outcome." A.22 (emphases in original).[6]

The Orioles mischaracterize the relevant facts about the repayment. Br. 30-31. The Nationals voluntarily agreed to repay the $25 million advance, plus interest, to MLB prior to a new RSDC hearing. A.559-60. If the hearing did not go forward as scheduled, the payment would be returned to the Nationals, A.559-60, and this makes perfect sense: a bond would have required the Nationals to make the $25 million in cash available only *after* the new hearing took place, but the Prepayment Agreement required the Nationals to return the full amount of that cash *before* the hearing. A.559-60. If the RSDC hearing were to be delayed following the Nationals' repayment, the club would be out $25 million in cash, potentially for an extended period of time. When the hearing would be rescheduled, the Nationals would again need to repay the $25 million prior to the hearing.

This was not an "ex parte" (Br. 30) agreement between the Nationals and the RSDC, but an agreement between the Nationals and *MLB*, meant to ameliorate the

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[6] Justice Marks had previously concluded that "MASN and the Orioles have not demonstrated that the circumstances of the advance raise any serious questions about the fairness of the arbitration process." A.855. This Court affirmed, observing that "[t]o allow the Orioles to now use the advance, which maintained the status quo, as a sword to disqualify the RSDC defies logic and mischaracterizes MLB's efforts to have the parties negotiate their differences without undue financial pressure on either side." 153 A.D.3d at 158 (plurality).

Orioles' long-asserted concern that having $25 million advance outstanding gave MLB a purported interest in the outcome of the arbitration. This Court noted that posting a bond would "guarantee repayment of the advance to MLB regardless of the outcome of the arbitration," 153 A.D.3d. at 158 (plurality). The Prepayment Agreement went further by ensuring MLB would be repaid in full *before* the arbitration even started. A.559-60.

Nor was this a "secret" agreement. Br. 30. The Orioles were informed of it on March 12, 2018, eight months before the arbitration took place. A.558. Notably, before learning about the Prepayment Agreement, the Orioles complained to the RSDC that "[i]t is intolerable for MLB to have skin in a game refereed by an MLB lawyer and an MLB committee." A.563. After learning that MLB would *not* have any "skin in [the] game," the Orioles reversed course and complained about repayment.

Thus, far from reflecting "deception" of this Court, Br. 31, the Prepayment Agreement in fact went even further than a bond to address the Orioles' stated concerns.

Nor did Supreme Court "materially misinterpret[]" (Br. 31) the terms of the Prepayment Agreement and its relationship to the August 2013 advance. Supreme Court correctly found "there is nothing in the [Prepayment] Agreement to suggest that MLB could 'lose $25 million' if the RSDC decided to recuse itself from the

arbitration." A.24. The Prepayment Agreement did not modify the terms of the 2013 advance, which provided that if the Nationals are awarded more than what they received in 2012 and 2013, "any payments from MASN otherwise due to the Nationals will be made first to the Commissioner's Office" to cover the advance and that "excess amounts would go to the Nationals." A.1133-34. Nor did the Prepayment Agreement create a "new contractual right." Br. 32. Rather, as Supreme Court found, "[a]t most, MLB would lose the benefit of receiving a lump sum payment rather than being repaid under the original terms of the loan." A.24. The Prepayment Agreement certainly did not provide that if the RSDC recused itself MLB would not be repaid under the terms of the 2013 advance.

The Orioles argue the RSDC did not appropriately consider the Prepayment Agreement when evaluating the Orioles' request for recusal, Br. 33-34, but this is false. The RSDC issued a comprehensive written decision in which it explained: "The RSDC members further understand that the loan discussed in [the February 9, 2018 letter] will be repaid before the hearing in this matter on August 15 and, if necessary, August 16, 2018, thereby mooting any concerns that the fact this loan remained outstanding would influence the outcome of this proceeding or give MLB an economic stake in the outcome of this proceeding"; "no basis exists for the RSDC to recuse itself" because "[n]o member of the RSDC has any personal interest in the outcome of this proceeding"; the "RSDC members had no role in the previous RSDC

hearing or subsequent judicial proceedings"; "no RSDC member has prejudged the outcome of the present proceeding"; "[t]he grounds articulated for recusal … were largely rejected by the First Department as grounds for disqualification of the RSDC"; and "[t]he First Department also granted the Nationals' motion to compel arbitration before the RSDC." A.577-78.

The cases cited by the Orioles are inapposite. *Pitta v. Hotel Ass'n of New York City, Inc*., 806 F.2d 419 (2d Cir. 1986) involved an arbitrator seeking to arbitrate *his own* employment termination. *Id*. at 420. In *Morelite Const. Co. v. N.Y.C. Dist. Council Carpenters Ben. Funds*, 748 F.2d 79 (2d Cir. 1984), the arbitrator's *father* was the president of the union that was a party to the arbitration. *Id*. at 84-85.

B. Supreme Court Correctly Found The Denial of Discovery Regarding The RSDC's Communications With MLB Does Not Establish Evident Partiality

The Orioles suggest that the RSDC was evidently partial because it refused to disclose information about its relationship with MLB. Br. 34-38. But the Orioles explicitly *agreed* to insider arbitration before the RSDC, an MLB committee composed of "industry insiders, with specialized expertise." 153 A.D.3d at 161 (plurality). Notably, the Orioles made this agreement *with MLB*, a party to the 2005 Agreement. A.535. The Orioles even acknowledged before Supreme Court that they "bought into whatever the structure was, whatever [MLB]'s role was; we agreed

to that, we had to live with that.'" 153 A.D.3d at 156 (plurality). As Supreme Court correctly found, "MLB's role should not have been a surprise in the first arbitration and certainly was not in the second one." A.25.

Justice Marks found no denial of fundamental fairness based on MLB's "support role" in the first arbitration, explaining "MLB provided the sort of support that the parties must necessarily have expected when they entered into the Agreement and there is no evidence that MASN and the Orioles had any expectation that the three Club representatives, when acting in their capacity as members of MLB's standing committee, would eschew assistance from MLB's support staff to the extent customary and appropriate." 2015 WL 6746689 at *7. This Court affirmed, observing:

> the sophisticated parties, represented by experienced counsel, knew full well how the RSDC operated, including that MLB would have significant influence over the arbitration process. MASN and the Orioles knew that RSDC's members are selected by MLB in its sole discretion, that there are no written rules of evidence, discovery rights or obligations, sworn testimony, or direct or cross-examination of witnesses. Most significantly, they knew that MLB staff would provide administrative, organizational and legal support, including analyzing financial information and preparing draft decisions in accordance with the instructions of the RSDC members who would make the final determinations.

153 A.D.3d at 145 (plurality).

Notably, this Court observed that if the RSDC were to be disqualified "based on the mere possibility that MLB will unduly influence it, it would eliminate the

viability of any future arbitration by any MLB club before the RSDC, and place into question the viability of industry-insider arbitrations in general." 153 A.D.3d at 157 (plurality). "Because arbitration is a matter of contract, 'the parties to an arbitration can ask for no more impartiality than inheres in the method they have chosen.'" *Id.* at 155 (plurality) (quoting *N.F.L. Mgmt. Council*, 820 F.3d at 548); *see also N.F.L. Players Ass'n ex rel. Peterson v. N.F.L.*, 831 F.3d 985, 998 (8th Cir. 2016) (same); *Delta Mine Holding Co. v. AFC Coal Props., Inc*., 280 F.3d 815, 821 (8th Cir. 2001) (same) (no "evident partiality" through failure to disclose details of relationship where arbitrator disclosed at a high level that he had a "client" relationship with a party; "the arbitration agreements expressly contemplated the selection of partial arbitrators," and "parties to an arbitration choose their method of dispute resolution, and can ask no more impartiality than inheres in the method they have chosen"); *Winfrey v. Simmons Food, Inc.*, 495 F.3d 549, 551-53 (8th Cir. 2007) (same).

The FAA does not permit vacatur for "evident partiality" where a party "chose, with its business eyes open, to accept the terms, specifications and risk of" an insider arbitration. *Westinghouse Elec. Corp. v. New York City Transit Auth.*, 82 N.Y.2d 47, 54 (1993); *see also N.F.L. Mgmt. Council*, 820 F.3d at 548 (upholding arbitration where parties agreed "to specifically allow the Commissioner to sit as the arbitrator in all disputes," and "did so knowing full well that the Commissioner had the sole power of determining what constitutes 'conduct detrimental,' and thus

knowing that the Commissioner would have a stake both in the underlying discipline and in every arbitration brought pursuant to Section 1(a)"). *See also TransAtlantic Lines LLC v. Am. Steamship Owners Mut. Prot. & Indem. Ass'n, Inc*., 253 F. Supp. 3d 725, 730–31 (S.D.N.Y. 2017) (rejecting TransAtlantic's argument that the alternative dispute resolution process in question was fundamentally unfair and biased, because it "ignores the fact that the supposed bias was one inherent in the ADR arrangement to which Transatlantic voluntarily agreement when it joined the Association") (citing *N.F.L. Mgmt. Council*, 820 F.3d at 548; *Westinghouse*, 82 N.Y.2d at 52–56).

At bottom, the circumstances here do not remotely implicate FAA § 10(a)(2), which provides that "an arbitrator's failure to disclose a material relationship with one of the parties can constitute 'evident partiality' requiring vacatur of the award." *Skyview Owners Corp. v. Service Employees Int'l Union, Local 32BJ*, 2004 WL 2244223, at *4-5 (S.D.N.Y. 2004) (citations omitted). Here, *everyone* involved was aware from the outset of the 2005 Agreement that the RSDC had a relationship with MLB and that MLB plays a role in RSDC proceedings. This Court noted in 2017 that even before entering the 2005 Telecast Agreement, "in 2004, the Orioles had used the RSDC to determine the FMV [fair market value] of the telecast rights fees the Orioles were receiving from their then regional sports network." 153 A.D.3d at 156 (plurality). Furthermore, in 2006, Peter Angelos, owner of the Orioles, testified

before Congress "as to the advantages of using the RSDC as a neutral body to determine the FMV of the future rights fees under the agreement." *Id.*

The Orioles' complaints about the RSDC forum thus should be rejected. That is all the more so given MLB's reduced role in the new arbitration proceedings. A.26. Neither the Commissioner nor any other MLB employees participated in the hearing. *Id*. The RSDC retained an outside legal advisor, Gregory Joseph. To the extent the Orioles now complain that the RSDC used S&C as outside counsel at the outset, that firm withdrew over five months before the hearing. *Id*.[7] Indeed, courts have "not been quick to set aside the results of an arbitration because of an arbitrator's alleged failure to disclose information" given the "obvious possibility" that "'a suspicious or disgruntled party can seize' upon an undisclosed relationship 'as a pretext for invalidating the award.'" *Skyview Owners Corp.*, 2004 WL 2244223 at *4-5.

1. Speculation Regarding MLB's Role Does Not Establish Evident Partiality Or Alter The Discovery Standards

Acknowledging that MLB's "public participation in the second arbitration was less overt" (Br. 37), the Orioles are left to suggest without any substantiation

[7] The Orioles selectively quote (Br. 37) from S&C's March 22, 2018 letter, omitting his observation that "[t]he RSDC is a committee of MLB owners and executives, established by MLB, which regularly interacts with MLB staff. With full knowledge of those facts, the RSDC was chosen by the parties as the entity to resolve the rights fee dispute at issue in these proceedings." A.1051.

that MLB influenced the arbitration "behind the scenes." *Id*. But as Supreme Court held, such speculation about what MLB may have done, without *any* evidence, does not support vacatur. A.26 (citing *U.S. Elecs*., 17 N.Y.3d at 914-15; *797 Broadway Grp*., 59 N.Y.S.3d at 665 ("a showing of evident partiality may not be based simply on speculation") (quotation omitted); *Siemens Transp. Partnership Puerto Rico, S.E. v. Redondo Perini Joint Venture*, 824 N.Y.S.2d 758 (Sup. Ct. N.Y. Cnty. 2006) (rejecting claims of partiality based on "sheer speculation"); *Areca, Inc.*, 960 F. Supp. at 57 (rejecting vacatur where petitioners had "not come forward with any direct and definite evidence of partiality")).[8]

The Orioles frame their complaint as concerning the RSDC's denial of discovery into communications between the RSDC and MLB. But under the FAA, "courts [] afford wide discretion to arbitrators in procedural matters." *Glen Rauch* , 2 A.D.3d at 301-02; *Supreme Oil Co. v. Abondolo*, 568 F. Supp. 2d 401, 408

[8] The Orioles assert Supreme Court ignored relevant legal precedent, Br. 37-38, but the cases the Orioles cite concern *undisclosed* relationships (unlike the well-known relationship between the RSDC and MLB here). *See Commonwealth Coatings Corp. v. Cont'l Cas. Co.,* 393 U.S. 145 (1968); *Sanko S.S. Co. v. Cook Indus., Inc.*, 495 F.2d 1260 (2d Cir. 1973). *Nat'l Hockey League Players' Ass'n v. Bettman*, 1994 WL 38130 (S.D.N.Y. Feb. 4, 1994) was not even a decision on a motion to confirm an arbitration award. In connection with a summary judgment motion, the court granted plaintiff "limited discovery," explaining that "in the context of a claim of arbitral bias, the court may insist that the challenging party proffer some evidence of arguable misconduct before permitting discovery, particularly if it is addressed to the arbitrator." *Id*. at *6-7.

(S.D.N.Y. 2008) (arbitrators have "great latitude to determine the procedures governing their proceedings and to restrict or control evidentiary submissions, without the need to follow all the niceties observed by the federal courts") (citation omitted). This includes an arbitrator's management of discovery. *Matter of Merrill Lynch*, 198 A.D.2d at 181; *accord Hyatt Franchising, L.L.C. v. Shen Zhen New World I, LLC*, 876 F.3d 900, 901-02 (7th Cir. 2017) ("Indeed, nothing in the Federal Arbitration Act requires an arbitrator to allow *any* discovery.") (emphasis in original); *Abu Dhabi Inv. Auth.*, 2013 WL 789642, at *9 (S.D.N.Y. Mar. 4, 2013) ("ADIA cites no federal case—and this Court could find none—where a court vacated an arbitral award because the panel denied one party a document request.").[9]

Here, the RSDC's decision to deny the Orioles' request for "all" communications with MLB (A.586) does not support vacatur. When the Orioles signed the 2005 Agreement, they knew "there are no . . . discovery rights" before the RSDC. 153 A.D.3d at 156 (plurality). The RSDC nonetheless granted a number of the Orioles' discovery requests. And with respect to the request for all communications between the RSDC and MLB, the RSDC issued a formal and

[9] *See N.F.L. Mgmt. Council*, 820 F.3d at 546–47 ("Had the parties wished to allow for more expansive discovery, they could have bargained for that right. They did not, and there is simply no fundamental unfairness in affording the parties precisely what they agreed on."); 21 Williston on Contracts §57:97 (4th ed.) (the FAA does not mandate discovery in arbitration proceedings; "In arbitration, discovery is the exception, not the norm.")

reasoned denial. A.578-79. The FAA precludes both reviewing and relitigating that discovery decision. *In re Falzone*, 15 N.Y.3d at 534; *New York State Corr. Officers*, 704 N.Y.S.2d at 914.

2. Statements By The MLB Commissioner Do Not Establish Evident Partiality.

The Orioles allege the Commissioner purportedly "prejudged" the dispute, and that heightened discovery on the RSDC's communications with MLB was therefore necessary. Br. 35. But this Court addressed most of these same statements in 2017, finding: "Nor does the fact that MLB has made certain public statements expressing the view that the RSDC acted within the scope of its authority in setting the rights fees, and that MASN would have to abide by that determination 'sooner or later,' warrant transfer to a new forum. Again, it is the RSDC, not MLB or its Commissioner that will render a final decision in this matter." 153 A.D.3d at 158 (plurality). The Commissioner's statements from July 2018 likewise acknowledge the parties' express agreement to resolve rights fee disputes before the RSDC.[10]

[10] The Orioles mischaracterize (Br. 35) statements made by Commissioner Manfred in July 2018. What the Commissioner said shows no prejudgment of the dispute: "We have treated Baltimore exactly the same as the other 29 clubs ever since this dispute began," and "as a matter of fact, we have actually probably treated them more fairly in a number of important respects … or more leniently rather than fairly, is really the word I mean." A.1143. The Commissioner expressed no view on whether the Orioles and MASN "honor[ed]" the agreement (Br. 35); in fact, "honor" appears nowhere in the article. A.1143. The Orioles and MASN never objected before the RSDC based on these statements.

Supreme Court properly rejected the Orioles' arguments: "The RSDC made the final decisions, with the assistance of experienced counsel and based on an exhaustive analysis of an extensive record," and "public statements such as those referenced by the Orioles" were not "sufficient to throw into doubt the fairness of a process that was handled and resolved by the RSDC with obviously thoroughness and care." A.27.

II. THE RSDC DID NOT DENY THE ORIOLES A FAIR HEARING

Vacatur under FAA § 10(a)(3) is only justified by "the most egregious errors or instances of extreme misconduct." *Fairchild Corp. v. Alcoa, Inc.*, 510 F. Supp. 2d 280, 286 (S.D.N.Y. 2007); *Kaminsky v. Segura*, 26 A.D.3d 188, 189 (1st Dep't 2006). Vacating an award under FAA § 10(a)(3) requires a "denial of fundamental fairness." *TCR Sports*, 2015 WL 6746689 at *7 (citing *Kolel Beth Yechiel Mechil of Tartikov, Inc., v. YLL Irrevocable Tr*., 729 F.3d 99, 104 (2d Cir. 2013)). As set forth above, denying a discovery request, including a request for documents, is not grounds for vacatur. *See* pp. 40-41, *supra.* The Orioles claim the RSDC denied the Orioles' request for post-Agreement communications, but purportedly relied on that same evidence. Br. 38-40. The Orioles claim this requested evidence was "dispositive" and "vital" in the RSDC's decision "against MASN and the Orioles," and that the RSDC drew "an adverse inference" against them based on their lack of

evidence. Br. 42. All of these claims are counter-factual. The Orioles do not even quote the Award on this point.

In fact, the post-Agreement evidence considered by the RSDC was neither "vital" nor "dispositive" in the RSDC's decision. Rather, the RSDC considered the post-Agreement evidence submitted *by both parties* and found that the "extrinsic evidence" was "largely ambiguous" and not persuasive. A.1786-94. The RSDC found only two post-Agreement documents persuasive: (1) a 2010 letter offered by the Orioles and (2) a 2011 letter offered by the Nationals. A.1793. These two pieces of extrinsic evidence—one from each side—were considered as part of the "weight of the evidence in this case," A.1795, and analyzed together with "all of the files, records and proceedings herein," "the testimony presented at the hearing," "the parties' expert reports and witness statements," "voluminous exhibits offered into the record," and "the experience of the Committee's members." A.1769.

Nothing about the RSDC's reasoning made its earlier discovery rulings improper, much less "extreme misconduct" warranting vacatur. *Fairchild Corp.*, 510 F. Supp. at 286. The Orioles demanded MLB produce "[a]ll documents that report, describe, summarize, analyze, discuss or comment on Section 2.J.3." A.603. MLB objected to producing post-Agreement materials, because the materials are "not probative of the parties' intentions at the time of contracting and would be overly burdensome to attempt to identify." *Id*. The RSDC agreed and declined to

compel further production by MLB, noting that the Orioles' "request for 'all' other documents that might bear on this issue is both overly broad and, at best, a fishing expedition." A.603.

The Orioles further claim (Br. 40-41) the RSDC improperly denied the Orioles' request for "all valuations of the fair market value of telecast rights fees performed by MLB or the RSDC," even those valuations "that were not appealed to the RSDC or did not result in the issuance of an RSDC Report." A.597-99. The Orioles omit that MLB in fact produced all related-party telecast agreement evaluations that had resulted in the RSDC's thirty-nine reports. A.602.

The Orioles nonetheless continued to press for valuations that did not result in the issuance of an RSDC report – valuations that were therefore not probative of the "RSDC's *established* methodology." *See* A.602. The RSDC properly exercised its discretion to deny that discovery request, ruling that the RSDC reports already produced to the Orioles were "the best evidence of how the RSDC used its established methodology to evaluate all other related party telecast agreements." A.602. Noting the Orioles "made no showing as to why or how any other papers were or are 'particularly critical,'" the RSDC explained that "it is not apparent to the RSDC why they are." A.602. The RSDC also ruled that the Orioles had not identified any necessity that outweighed MLB's confidentiality and privilege concerns about the requested materials. A.601-03.

The Orioles thus are left to complain they received some, but not all, of the discovery they wanted. But the RSDC, like any arbitrator, had "broad discretion to control discovery" and could permissibly "limit[] document requests to specific requests narrowly tailored to the issues." *Landmark Ventures*, 63 F. Supp. 3d at 352.

The Orioles' cited authorities miss the mark. *Tempo Shain Corp. v. Bertek, Inc.*, 120 F.3d 16 (2d Cir. 1997) did not involve the denial of a document discovery request; it addressed a panel's "refusal to continue the hearings to allow [a witness] to testify." *Id*. at 18. In *Hoteles Condado Beach, La Concha & Convention Ctr. v. Union de Tronquistas Local 901*, 763 F.2d 34 (1st Cir. 1985), an arbitrator reviewing an employee's termination refused to consider the only relevant testimony available, *id*. at 39, but nonetheless "concluded that the Company had failed to submit sufficient evidence" the termination was justified. *Id*.

The Orioles also cite inapposite cases where arbitrators drew adverse inferences from the absence of evidence, after denying requests for discovery seeking that same evidence. *See Iran Aircraft Indus. v. Avco Corp*., 980 F.2d 141, 146 (2d Cir. 1992); *Gulf Coast Indus. Workers Union v. Exxon Co*., *USA*, 70 F.3d 847, 850 (5th Cir. 1995). But here, the RSDC did not draw any adverse inferences from the absence of materials the Orioles requested from MLB. The only adverse inference drawn by the RSDC related to materials that the *Orioles* refused to produce *from their own files*, A.1793 (letter referenced by the Orioles' own witness "was

never produced or offered into evidence by the Orioles/MASN, even though it would be favorable evidence within the Orioles/MASN's ability to produce—if it existed"). The RSDC's decision was entirely proper. *Cf.* 4A N.Y.Prac., Com. Litig. in New York State Courts § 61:54 (FAA does not prohibit arbitrators from drawing an adverse inference).

III. THE RSDC DID NOT EXCEED ITS POWERS

Vacating for "exceeding powers" under the FAA is a "heavy burden." *TCR Sports*, 2015 WL 6746689 at *5. It is "not enough … to show that the [arbitrator] committed an error—or even a serious error." *Id*. (citation omitted). In cases involving contract interpretation, the "sole question" is "whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong.'" *Id*. (quoting *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013)). The FAA "asks whether the Arbitrators had the *power*, based on the arbitration agreement, to *reach* a certain issue, not whether the arbitrators *correctly decided* that issue." *Nat'l Union Fire Ins. Co.*, 2005 WL 857352 at *4–5 (quote omitted; emphases added). "[R]elitigat[ing] the merits" is not permitted. *Id*. at *5. Courts must "defer even to a barely colorable justification for the arbitrators' interpretation of the contract." *TCR Sports*, 2015 WL 6746689 at *6 (cite and quote omitted); *U.S. Elecs.*, 73 A.D.3d at 498 (awards are upheld if "there is even colorable justification for the result, regardless of errors of law or fact committed by the arbitrators"). The

FAA "essentially bars review of whether an arbitrator misconstrued a contract." *T. Co. Metals LLC v. Dempsey Pipe & Supply, Inc.*, 592 F.3d 329, 339 (2d Cir. 2010). Once a court "determine[s] that the parties intended for the arbitration panel to decide a given issue, it follows that the arbitration panel did not exceed its authority in deciding that issue – irrespective of whether it decided the issue correctly." *Id*. (citation and quotation omitted).

Here the RSDC's mandate was to "determine the fair market value" of the Nationals' rights "using the RSDC's established methodology for evaluating all other related party telecast agreements in the industry." A.1769. That is exactly what the RSDC did. Fourteen pages of the Award are devoted to interpreting the contractual phrase "established methodology for evaluating all other related party telecast agreements in the industry" under Maryland law. A.1786-1799. The RSDC carefully considered the Orioles' and Nationals' arguments on the meaning of the phrase and, after concluding the language was ambiguous, analyzed "the parties' proffered extrinsic evidence with respect to this phrase." A.1780. The RSDC also evaluated evidence on the alleged "purpose" of the 2005 agreement, A.1790-91, and conducted a detailed, textual analysis of the contract. A.1794.

The Orioles assert that under Maryland law contracts are "to be interpreted solely by determining the intentions of the parties 'at the time of execution," and that instead of doing so, the RSDC "imposed its own policy choice." Br. 46. The Orioles

mischaracterize the facts. The Orioles submitted evidence on the purported "purpose" of the 2005 Agreement to argue that "[t]he Agreement is meant to compensate the Orioles for the Nationals' move to Washington," A.1787, and the RSDC addressed these arguments directly, observing that "the Orioles have received substantial compensation" to date, and furthermore that "it is ambiguous, at best, as to whether that purpose should have any impact the setting of telecast rights fees or the interpretation of the phrase 'established methodology.'" A.1790. The RSDC also noted that a compensatory goal, in any event, "does not answer the question of *how much* the Orioles should be compensated or how, if at all, that purpose should influence a determination of license fees that are to be based on 'fair market value.'" A.1790-91 (emphasis added). After considering the remainder of the evidence submitted, the RSDC concluded that "established methodology" in the 2005 Agreement "refers to a methodology that the RSDC uses for all other telecast agreements at the time the license fees are determined," which was "the methodology set forth in" the 2011 letter that MLB sent to the parties before the start of the first RSDC arbitration. A.1795. This methodology, the RSDC explained, "requires that the Committee consider both a bottom-up, Bortz-style analysis and look at comparable teams' transactions," leading the RSDC to apply *both* the Orioles' proposed methodology *and* the Nationals' proposed methodology. A.1797-1816.

Notably, the Orioles' argument that Maryland contracts are "to be interpreted solely by determining the intentions of the parties 'at the time of execution,'" Br. 45, is contradicted by a case the Orioles cite, which provides that the written language of the agreement governs. *See Sy-Lene of Wash., Inc. v. Starwood Urban Retail II, LLC*, 829 A.2d 540, 546 (Md. 2003).

The Orioles may disagree with the RSDC's interpretation of the Agreement – but this is irrelevant under the FAA, which only asks "whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong." *TCR Sports*, 2015 WL 6746689 at *5 (quoting *Oxford Health*, 569 U.S. at 569).

The cases cited by the Orioles (Br. 43-45) are inapposite, because they involve situations where arbitrators exceeded the scope of their contractual mandate or the law. *See Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 672 n.3, 683 (2010) (arbitrators' assertion of power to conduct class-wide arbitration had no basis in the agreement); *Barbier v. Shearson Lehman Hutton, Inc.*, 948 F.2d 117, 122 (2d Cir. 1991) (vacating portion of award granting punitive damages which were not available as a matter of law).[11]

[11] In *Ocean Petrol., Co., Inc. v. Yanek*, 5 A.3d 683, 691 (Md. 2010), cited by the Orioles, the parties' lease plainly stated that a tenant should have the ability to buy the property from the lessor, which the court determined to mean the purchase option at issue was unencumbered. *Id*. at 691. *Schneider Elec. Bldgs. v. Western Surety*

Finally, the Orioles incorrectly assert that "Supreme Court erred by applying the 'manifest disregard' standard of review" because it is "inconsistent with the plain language of section 10(a)(4)." Br. 46-47. But as Supreme Court explained, "the RSDC obviously had the authority to consider the interpretation of relevant language in the agreement and the application of the facts to that language." A.30. Moreover, '"the manifest disregard standard does not permit review of the panel's interpretation of the parties' agreement even if that interpretation was erroneous." A.30 (citing *Cantor Fitzgerald Secs.*, 83 A.D.3d at 592). Supreme Court concluded that "[t]he Orioles' arguments with respect to the RSDC's misapplication of Maryland law do not come close to the required showing that the RSDC exceeded its powers or showed manifest disregard for the law." A.30.[12]

Co., 149 A.3d 778, 787 (Md. App. 2016) was considered here by the RSDC, which disagreed with the Orioles' interpretation of the decision. A.1769.

[12] The Orioles assert that the RSDC "imposed disparate treatment on MASN by applying a methodology that permitted a maximum profit margin of 20%." Br. 51; *see also* Br. 26 (referencing the RSDC's evaluation of the Boston Red Sox telecast agreement). But in fact the RSDC determined the applicable "established methodology" is set forth in MLB's November 2011 letter, A.755-66, which the panel found is "substantially the same" as the methodology described in the RSDC's 34th Report. A.764. Neither the November 2011 letter nor the 34th Report guarantees a specific operating margin. After applying the factors identified in the November 2011 letter and the 34th Report, A.766-83, the RSDC explained that "[w]eighing all of the evidence and arguments" submitted by the parties, and "viewing them through the prism of the Committee members' substantial experience in the industry" and "economic reality," an increasing margin capped at 20% was "the most appropriate" here. A.773-74.

IV. THE DISPUTE SHOULD NOT BE REMANDED TO A NEW ARBITRAL BODY

Relying primarily on the *dissent* from this Court's 2017 decision (Br. 47-49), the Orioles yet again ask this Court to reform the parties' agreement and remand to a new forum for arbitration. But "[t]he FAA 'requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms.'" 153 A.D.3d at 154 (plurality) (quoting *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989)). "Where, as here, the parties have agreed explicitly to settle their disputes only before particular arbitration fora, that agreement controls." *Id*. (plurality) (quotation omitted). An "extraordinary showing" is required to warrant reformation of an agreement and remand to a new forum. 153 A.D.3d at 160 (plurality); *id*. at 178 (dissent) (noting the same standard).

The Orioles make *no* showing that would warrant reformation of the agreement and disqualification of the RSDC, much less the "extraordinary showing" required to do so. Rather, they advance the same attacks on the RSDC's partiality that were previously rejected by Supreme Court and this Court. *TCR Sports*, 2015 WL 6746689 at *7-13; 153 A.D.3d at 160 (plurality).

Justice Marks rejected as "unavailing" the Orioles' request to order the parties to an arbitral forum other than the RSDC, noting that "re-writing the parties' Agreement is outside of [the Court's] authority." *Id*. at *13, n.21. This Court upheld

that determination, 153 A.D.3d at 154 & n.3 (plurality), explaining that "MASN and the Orioles have not and cannot show that the agreement is unenforceable under general contract principles." *Id*. at 160. This Court concluded that "to compel the parties to arbitrate before a body other than one to which they knowingly agreed, just because MASN and the Orioles are dissatisfied with the result, would violate the Nationals' right to assert their contractual rights under the agreement and create undue uncertainty within this industry, and others, that have chosen to use panels composed of industry insiders, with specialized expertise, to arbitrate complex disputes." *Id.* at 160-61 (plurality).

The Orioles incorrectly assert the 2019 Award is the "same" as the 2014 award. Br. 52. The 2019 Award in fact employed a different methodology and arrived at a different result. For example, the 2014 award assumed "an operating margin from baseball programming in 2012 of five percent," which would "increase over the five-year period to approximately eight percent on baseball programming by 2016, and to in excess of eleven percent overall." A.527-28. In contrast, the 2019 Award concluded the "most appropriate operating margin to apply to MASN would be an increasing margin that starts at zero in 2012 and increases by 5% each year until it reaches 20% in 2016." A.1804. The 2019 Award, unlike the 2014 award, averaged a "bottom-up, Bortz-style analysis" and a "comparable-teams analysis." A.1797. These different methodologies resulted in different fair market

value calculations: for example, the 2014 award's calculation of fair market value for 2016 telecast rights ($66.7 million, A.533) was more than $4 million higher than the Award's calculation ($62.4 million, A.1815).

The Orioles again rely on inapposite cases. Br. 49. *Erving v. Virginia Squires Basketball Club*, 349 F. Supp. 716, 719 (E.D.N.Y. 1972), *aff'd*, 468 F.2d 1064 (2d Cir. 1972) involved parties who had a contractual intent to submit their dispute to a neutral expert (the league commissioner), but then a partner in the defendant's lawyer's firm was appointed commissioner.

In *Seidman v. Merrill Lynch*, 75 Civ. 6316 (S.D.N.Y. Aug. 24, 1977), the court actually held there were "no justifiable reasons for altering the agreement to have this private dispute arbitrated before a body other than the NYSE." *Id.* at *6-7.

Finally, in *Rabinowitz v. Olewski*, 100 A.D.2d 539 (2d Dep't 1984), the court found an appearance of bias because the arbitrators received a "highly inflammatory letter" about the plaintiff before proceedings began. *Id*. at 540.

V. SUPREME COURT'S ENTRY OF JUDGMENT WAS NOT ERROR

There is no merit to the Orioles' argument (Br. 52) that Supreme Court "unlawfully modified the award" by entering a monetary judgment. The RSDC's final award "determined ... that the license fees to be paid by MASN to the Nationals for each of the years 2012–2016" are as follows:

Year	**License Fee**
2012	$54,878,272.63
2013	$57,767,546.52
2014	$60,410,594.11
2015	$61,363,965.13
2016	$62,414,285.75
Average Annual Value:	$59,366,932.83

A.1815. The RSDC also expressly set forth that MASN already had paid rights fees to the Nationals of $34.0 million in 2012, $36.6 million in 2013, $39.3 million in 2014, $42.0 million in 2015, and $45.7 million in 2016. A.1776.

Supreme Court confirmed the Award, referred to a Judicial Hearing Officer the "administerial task" (A.46) of subtracting the rights fees previously paid by MASN from the amounts now awarded by the RSDC (A.31-32), and thereafter entered judgment in that amount (A.88-90).

The judgment thus properly "encompasse[d] the terms of the confirmed arbitration awards and [did] not enlarge upon those terms." *Zeiler v. Deitsch*, 500 F.3d 157, 170 (2d Cir. 2007) (cited at Br. 8, 52). In arguing (Br. 52) that Supreme Court "modified" the Award by "performing [a] calculation of the Nationals' damages," the Orioles confuse "enforcement" of the award with "confirmation." *See Zeiler*, 500 F.3d at 170. Supreme Court's order merely confirmed the Award. Supreme Court then performed the calculations called for by the Award and entered a monetary judgment. A.31-32, A.88-90. This was proper; "[o]nce confirmed, [arbitral] awards become enforceable court orders, and, when asked to enforce such

orders, a court is entitled to require actions to achieve compliance with them." *Zeiler*, 500 F.3d at 170.

Thus, for example, *Canada Dry Delaware Valley Bottling Co. v. Hornell Brewing Co.* enjoined violations of a confirmed award, even though the arbitrators had granted only declaratory, not injunctive relief, because failure to do so "would—in effect—render the arbitration panel's [] ruling a nullity." 2013 WL 5434623, at *10 (S.D.N.Y. Sept. 30, 2013) (cited at Br. 53). Here, the RSDC's ruling for past money owed would have likewise been rendered a nullity had Supreme Court not awarded those amounts upon entering judgment.

When, as here, "[a]ll that needs to be done are ministerial acts or arithmetic calculations," it is legal error for a court to enter judgment *without* performing the calculations. *Matter of Civil Serv. Employees Ass'n, Inc.*, 223 A.D.2d at 890-93 (reversing Supreme Court's remand to arbitrators to perform calculations themselves); *Morgan Guar. Tr. Co.*, 114 A.D.2d at 821–22 (where "arbitrators fixed the formula upon which the escalated rent was based, the real issue they were called upon to decide," subsequent "calculation of the amount due based upon that formula" was "a mere ministerial act and did not detract from the finality of the award," permitting confirmation; "[w]here the formulae for the computations are so clear and specific that the determination of the amounts owing is merely an accounting calculation, the award is final and definite and is required to be

confirmed"); *Matter of Vermilya (Distin)*, 157 A.D.2d at 1030–31 (argument for vacatur "based upon lack of a specific dollar figure is not valid where, as here, computation of the amount due is but a ministerial act," and Supreme Court could perform remaining calculations when arbitrators ordered that employee be "made whole for any back pay lost without interest and less any earnings from outside employment").[13]

At the same, the RSDC's award is not declaratory. Here, the Award "clearly was a monetary award of what 'shall be paid' to the Nationals, down to the single dollar" for the past years 2012-16. A.31. As Supreme Court explained, "[i]t's a monetary award that does permit post-award interest subject only to the administerial task of deducting television rights fees that have already been paid." A.46; *see also* A.47; A.54.

Moreover, declaratory relief is targeted only "to present or prospective obligations," not to "injuries already suffered." 24C Carmody-Wait 2d § 147:1

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[13] *See also Matter of Trudeau (S. Colonie Cent. Sch. Dist.)*, 135 A.D.2d 150, 156 (3d Dep't 1988), *aff'd sub nom. Trudeau v. S. Colonie Cent. Sch. Dist.*, 73 N.Y.2d 736 (1988) (Supreme Court should have confirmed award directing that party be paid "daily rate of pay for each hour so worked," even though award did not itself perform that calculation); *States Marine Lines, Inc. v. Crooks*, 19 A.D.2d 1, 3 (1st Dep't 1963), *aff'd*, 13 N.Y.2d 206 (1963) ("It is not a valid objection to an award to say that the amount payable may depend on a computation[.]"); *Hunter v. Proser*, 298 N.Y. 828, 829 (1949) (similar); 21 Williston on Contracts § 57:114 (4th ed. July 2019) ("An award is still complete if arithmetic calculations or similar ministerial acts remain to be completed").

(Nov. 2019).[14] The Orioles' cited cases (Br. 53) did not involve sums of money owed for previous years. In *Canada Dry Delaware Valley Bottling*, 2013 WL 5434623, at *4 (S.D.N.Y. Sept. 30, 2013), the award was "declaratory" because petitioners sought only declaratory relief regarding distribution rights and not monetary relief for past injuries. In *W. Massachusetts Elec. Co. v. Int'l Bhd. of Elec. Workers, Local 455*, 2012 WL 4482343, at *7 (D. Mass. Sept. 27, 2012), the arbitrator decided only *whether* workers could be compelled to work out of state; the award did not calculate money owed for past wrongs. Tellingly, the Orioles cite no cases holding that an award deciding past amounts due, by formula or otherwise, is *not* monetary.

That the RSDC was expressly empowered "to determin[e] 'the fair market value of the Rights'" (Br. 54-55 (quoting A.793)) supports the Nationals, not the Orioles. The RSDC could not have awarded mere declaratory relief for past amounts owed. *See, e.g.*, *Ithilien Realty Corp. v. 180 Ludlow Dev. LLC*, 140 A.D.3d 621, 622 (1st Dep't 2016).

Morgan Guaranty Trust Co., 114 A.D.2d at 821–22, is instructive. While it was argued that the parties' arbitration agreement called for the arbitrators to determine the formula for rent payments but not to "compute the amounts due" under

[14] 28 N.Y. Prac., Contract Law § 12:36 (Aug. 2019) (same); Patrick M. Connors, Practice Commentaries CPLR 3001:1 (same).

that formula, this Court held that Special Term nonetheless should have confirmed the arbitrators' award because, as here, "the arbitrators fixed the formula upon which the escalated rent was based" and performed the "calculation of the amount due based upon that formula" itself. *Id.*

To the extent the "RSDC acknowledged" (Br. 55) it had no "authority to enter a judgment" or "award prejudgment interest" (A.1785), this simply reflects the rule that an arbitral "award is not self-enforcing." 21 Williston on Contracts § 57:126 (4th ed. Aug. 2019) (footnotes omitted)). Indeed, "[e]ither party is entitled to bring an action on the award and to have judgment entered on it." *Id*. There was thus no need to ask RSDC itself to perform a completely obvious calculation based on amounts in the Award.

CONCLUSION

The Nationals respectfully submit that this Court should affirm Supreme Court's Decision and Order dated August 22, 2019, Decision and Order dated November 14, 2019, and Judgment dated December 9, 2019.

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Respectfully submitted,

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