

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**ROBIN KARNETTE, and
DIANE McINTYRE, on
behalf of themselves and
all others similarly situated,**

Plaintiffs,

Civil Action No.: 3:06CV44

v.

JURY TRIAL DEMANDED

WOLPOFF & ABRAMSON, L.L.P.

Defendant.

FIRST AMENDED CLASS ACTION COMPLAINT

I. INTRODUCTION

1. Plaintiffs Robin Karnette and Diane McIntyre, on behalf of themselves and all others similarly situated, bring this action for damages and declaratory relief against Defendant Wolpoff & Abramson, L.L.P. for violations of the Fair Debt Collections Practices Act (“FDCPA”), 15 U.S.C. §§1692 *et seq.*, which prohibits debt collectors from engaging in abusive, deceptive, and unfair collection practices. In violation of the FDCPA and due process principles, Wolpoff & Abramson, L.L.P. obtained arbitration awards through a nonparticipatory process, using false, deceptive or misleading means in connection with the collection of debts. Plaintiffs request that the practices of Defendant described below be declared to violate the FDCPA and that they and the class members be awarded actual and statutory damages payable by the Defendant, and that, under Virginia law, Defendant be prohibited from seeking to confirm or collect on any arbitral awards against any Virginia residents that were obtained through similar

unlawful means.

II. JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. §§ 1331 and 1367. Declaratory relief is available pursuant to 28 U.S.C. §§2201 and 2202, and Virginia equity law.

III. PARTIES

3. Plaintiff Robin Karnette (“Ms. Karnette”) is a natural person who resides in Fairfax County, Virginia. Ms. Karnette is a consumer within the meaning of the FDCPA, as defined at 15 U.S.C. § 1692a(3).

4. Plaintiff Diane McIntyre (“Ms. McIntyre”) is a natural person who resides in Harrisonburg, Virginia. Ms. McIntyre is a consumer within the meaning of the FDCPA, as defined at 15 U.S.C. § 1692a(3).

5. Defendant Wolpoff & Abramson, L.L.P. (“Wolpoff & Abramson”) is a professional corporation, headquartered at Two Irvington Centre, 702 King Farm Blvd., Rockville, Maryland, 20850-5775. It maintains offices throughout Virginia, including at 10605 Judicial Drive, Bld. A-5 Fairfax, Virginia, 22030, and 1108 E. Main Street, Suite 1003, Richmond, Virginia, 23462. A principal or regular purpose of its business is the collection of consumer debt.

6. Defendant regularly collects or attempts to collect debts owed or due or asserted to be owed or due another, and is a “debt collector” within the meaning of the FDCPA, as defined at 15 U.S.C. § 1692a(6).

IV. STATEMENT OF FACTS

A. ROBIN KARNETTE

7. Ms. Karnette obtained consumer credit from MBNA through a credit card.

8. Ms. Karnette's debt was for personal, family, or household purposes, bringing Defendant Wolpoff and Abramson's later collection activities within the purview of the FDCPA. 15 U.S.C. § 1692a(5).

9. After subsequent financial difficulties, Ms. Karnette fell behind in her payments and then attempted to resolve the balance she owed.

10. Wolpoff & Abramson began dunning Ms. Karnette on the debt.

11. Wolpoff & Abramson obtained an alleged arbitration award against Ms. Karnette to recover the amount of the alleged debt, and through that process improperly increased the amount of the alleged debt as shown by the difference between the debt immediately prior to arbitration and the amount of the alleged arbitral award. (Compare Exhibit A-1 to Exhibit A-2 attached to Defendant's Motion to Dismiss).

12. Defendant's process used to obtain that award utilized the form notice (Exhibit A-1, pg 3 attached to Defendant's Motion to Dismiss) sent by Defendant which stated that, absent an agreement to the contrary, a participatory hearing would be held. However, the process concluded without any participatory hearing and no agreement to the contrary. In that non-participatory process, Ms. Karnette was not allowed to attend in person in opposition to the claim presented by Wolpoff & Abramson.

13. The alleged arbitration award obtained by Wolpoff & Abramson against Ms. Karnette is invalid and is not an "arbitration" award that federal law recognizes, because the

“failure to conduct a hearing” is “tantamount to no arbitration.” (See Exhibit A, Bates v. McQueen, 270 Va. 95, 613 S.E. 2d 566 (2005)(decided regarding the Virginia Arbitration Act but directly applicable to the Federal Arbitration Act and the process used by Defendant).

14. For debts of Virginia residents, Defendant’s standard practice after obtaining such awards is to use the Virginia judicial system to convert the alleged arbitration award into a judgment in a process in which the substantive decision regarding the amount of the debt and the amount of fees and costs added to it is not subject to review.

B. DIANE MCINTYRE

15. Similar to Ms. Karnette, Ms. McIntyre obtained consumer credit from MBNA through a credit card.

16. Ms. McIntyre’s debt was for personal, family, or household purposes, bringing Defendant Wolpoff and Abramson’s later collection activities within the purview of the FDCPA. 15 U.S.C. § 1692a(5).

17. After subsequent financial difficulties, Ms. McIntyre fell behind in her payments.

18. Wolpoff and Abramson began dunning Ms. McIntyre on the debt.

19. Wolpoff & Abramson obtained an alleged arbitration award against Ms. McIntyre to recover the amount of the alleged debt, and through that process improperly increased the amount of the alleged debt as shown by the difference between the debt immediately prior to arbitration and the amount of the alleged arbitral award. (Compare Exhibit A-3 to Exhibit A-4 attached to Defendant’s Motion to Dismiss).

20. Defendant’s process used to obtain that award utilized the form notice

(Exhibit A-3, pg 3 attached to Defendant's Motion to Dismiss) sent by Defendant which stated that, absent an agreement to the contrary, a participatory hearing would be held. However, the process concluded without any participatory hearing and no agreement to the contrary. In that non-participatory process, Ms. McIntyre was not allowed to attend in person in opposition to the claim presented by Wolpoff & Abramson.

21. The alleged arbitration award obtained by Wolpoff & Abramson against Ms. McIntyre is invalid and is not an "arbitration" award that federal law recognizes, because the "failure to conduct a hearing" is "tantamount to no arbitration." (See Exhibit A, Bates v. McQueen, 270 Va. 95, 613 S.E. 2d 566 (2005)(decided regarding the Virginia Arbitration Act but directly applicable to the Federal Arbitration Act and the process used by Defendant).

22. For debts of Virginia residents, Defendant's standard practice after obtaining such awards is to use the Virginia judicial system to convert the alleged arbitration award into a judgment in a process in which the substantive decision regarding the amount of the debt and the amount of fees and costs added to it is not subject to review.

V. DEFENDANT'S PRACTICES

23. It was the policy and practice of Defendant to obtain alleged arbitration awards through an invalid nonparticipatory process, and then to use those awards in an attempt to collect alleged debts.

24. It was the policy and practice of Defendant to add or seek to add costs and fees to any "arbitration" award through the use of that unlawful process.

VI. CLASS ALLEGATIONS

25. This action is brought as a class action on behalf of a class defined as

follows:

- (i) all persons with addresses in Virginia
- (ii) from whom defendant obtained or attempted to obtain or will obtain or attempt to obtain an “arbitration” award through an arbitral process with non-participatory process, absent an agreement to the contrary
- (iii) in connection with attempts to collect an alleged debt which are shown by Defendant’s records or the records of the original creditors to be primarily for personal, family, or household purposes
- (iv) during the period beginning one year prior to the date of filing this action through the date of certification.

26. On information and belief, based on the fact that Defendant routinely utilizes a form arbitral claim by which to obtain alleged arbitration awards, the class is sufficiently numerous that joinder of all members is impractical.

27. There are questions of law and fact common to the class, which questions predominate over any questions peculiar to individual class members. The common questions include:

(1) Whether each Defendant is a “debt collector” as defined by 15 U.S.C. §1692a(6).

(2) Whether the Defendant threatened actions that cannot legally be taken or that is not intended to be taken in violation of 15 U.S.C. §1692e(5).

(3) Whether the Defendant falsely stated the character, amount or legal status of debts in violation of 15 U.S.C. §1692e(2).

(4) Whether the Defendant's communications were the use of false representations or deceptive means to collect or attempt to collect a debt in violation of 15 U.S.C. §§1692e and e(10).

28. Plaintiffs have the same claims as the members of the class. All of the claims are based on the same factual and legal theories.

29. Plaintiffs will fairly and adequately represent the interest of the class members. Plaintiffs have retained counsel experienced in prosecuting claims arising under the Fair Debt Collection Practices Act and class actions. There is no reason why Plaintiffs and their counsel will not vigorously pursue this matter.

30. Certification of the Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is appropriate in that:

- (a) The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members; and
- (b) A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

31. Certification of a class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure is also appropriate. Defendant has acted in a uniform manner toward the class thereby making injunctive and declaratory relief appropriate.

32. The Court may also grant certification of a hybrid class combining the elements of Rule 23(b)(3) for monetary damages and Rule 23(b)(2) for equitable relief.

VII. COUNT I -- FAIR DEBT COLLECTION PRACTICES ACT

33. Plaintiffs repeat, reallege, and incorporate by reference the foregoing

paragraphs.

34. Defendant's violations of the FDCPA include, but are not limited to, the following:

- (a) Misrepresenting the character, amount, or legal status of the alleged debt in violation of 15 U.S.C. §1692e(2)(A);
- (b) Threatening action that cannot legally be taken or that is not intended to be taken in violation of 15 U.S.C. §1692e(5);
- (c) Using false, deceptive, or misleading representations or means in an attempt to collect a debt in violation of 15 U.S.C. §§1692e and e(10).

VIII. COUNT II – VIRGINIA EQUITY CLAIM FOR INJUNCTIVE RELIEF

35. Plaintiffs repeat, reallege, and incorporate by reference the foregoing paragraphs.

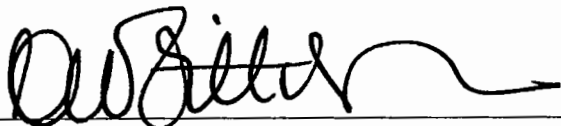
36. In the alternative to the application of prospective class relief under the FDCPA and the Court's inherent powers, Plaintiffs and the class have no adequate remedy at law to protect themselves from future violations by the Defendant regarding debts not yet being acted upon by Defendant.

37. Because Plaintiffs and the class have no adequate remedy to protect themselves from future actions by Defendant regarding its use of its form arbitral process to obtain alleged arbitration awards, Plaintiffs and the class may use Virginia equity law to seek an injunction against such conduct.

WHEREFORE, Plaintiffs Robin Karnette and Diane McIntyre request that judgment be entered for themselves and the class against Defendant Wolpoff & Abramson for:

- A. Declaratory relief that Defendant's practices violate the FDCPA;
- B. Actual damages, pursuant to 15 U.S.C. §1692k;
- C. Statutory damages, pursuant to 15 U.S.C. §1692k;
- D. Costs and reasonable attorneys' fees pursuant to 15 U.S.C. §1692k;
- E. An injunction prohibiting Defendant from seeking, obtaining, or using any alleged arbitral process that utilizes an unlawful hearing process, and
- F. Such other and further relief as the Court deems just and equitable.

**PURSUANT TO RULE 38(B) OF THE FEDERAL RULES OF CIVIL PROCEDURE,
PLAINTIFFS ROBIN KARNETTE AND DIANE MCINTYRE HEREBY DEMAND
TRIAL BY JURY IN THIS ACTION.**



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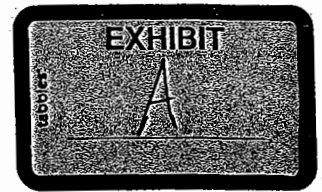
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon opposing counsel of record by placing a copy of same in the United States Mail, properly addressed and first class postage pre-paid on this the 6th day of March, 2006.

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DAVID M. BATES v. JOHN B. McQUEEN, D/B/A CYPRESS SPRINGS
LOGGING

Record Nos. 042228 & 042639

SUPREME COURT OF VIRGINIA

270 Va. 95; 613 S.E.2d 566; 2005 Va. LEXIS 60

June 9, 2005, Decided

PRIOR HISTORY: [***1] FROM THE CIRCUIT COURT OF SURRY COUNTY. Samuel E. Campbell, Judge.

DISPOSITION: Reversed and remanded.

LexisNexis(R) Headnotes

COUNSEL: S.M. Franck (Andrew M. Franck; Geddy, Harris, Franck & Hickman, on briefs) for appellant.

Kevin D. Holden (David S. Smith; Kaufman & Canoles, on brief), for appellee.

JUDGES: Present: All the Justices **OPINION BY JUSTICE CYNTHIA D. KINSER.**

OPINION BY: CYNTHIA D. KINSER

OPINION: [*97] **OPINION BY** [**567]

JUSTICE CYNTHIA D. KINSER

The primary issue in these appeals concerns the failure of arbitrators to conduct a hearing. The appellant, David M. Bates, challenges both the circuit court's judgment affirming an arbitration award in favor of the appellee, John B. McQueen, d/b/a Cypress Springs Logging, and the circuit court's award of attorney's fees to McQueen. Because we conclude that a hearing is required by the terms of *Code § § 8.01-581.04 and -581.010(4)*, and because the issue of attorney's [*98] fees must be decided by arbitrators, we will reverse the judgments of the circuit court.

MATERIAL FACTS AND PROCEEDINGS

Bates and McQueen entered into a written "TIMBER SALE AGREEMENT" (the Agreement) dated September 6, 2001, in which McQueen agreed to purchase certain trees located on a parcel of real estate situated in Surry County and owned by Bates. n1 As perti-

nent to the issue on appeal, the Agreement contained the following provision regarding arbitration:

[**2]

ARBITRATION: Should any disagreement arise under or by virtue of this contract concerning the cutting operation contemplated herein, each of the parties hereto, his or its heirs, executors, administrators, successors or assigns agree to arbitrate the controversy and submit the controversy to two disinterested arbitrators, one to be chosen by each of the parties, and, in case they disagree, the two shall choose a third disinterested arbitrator, and the decision of two of the arbitrators shall be final and binding upon all the parties after it has been rendered in writing.

n1 The name of the buyer listed in the Agreement is Cypress Springs Logging, Inc., not John B. McQueen, d/b/a Cypress Springs Logging. There is no issue before us concerning this discrepancy. Thus, we will treat the corporate entity and McQueen as one and the same, as do the parties.

Soon after McQueen commenced the timber harvest, a dispute arose between the parties about the "cutting operation." Pursuant to the terms of the Agreement, [***3] each party selected an arbitrator. The two arbitrators, who were both familiar with timber harvesting operations, were unable to agree upon a resolution of the dispute, and each therefore submitted a written report outlining their respective determinations. While one report showed no date, the other report was dated December 10, 2001. At some point thereafter, the two arbitra-

tors appointed a third arbitrator as required by the terms of the Agreement.

Before the third arbitrator, a registered forester, submitted a written report, McQueen filed a motion for judgment against Bates on January 30, 2002. More than a year later, the third arbitrator sent a report to the other two arbitrators. McQueen's designated arbitrator subsequently indicated in writing his agreement with the third arbitrator's recommendations.

[*99] In McQueen's motion for judgment, he alleged that Bates had breached the Agreement by blocking McQueen's access to the timber, thereby preventing McQueen from completing the timber harvest and forcing him to expend additional time to remove the timber that he had cut. In response, Bates filed a grounds of defense and a counterclaim. In the counterclaim, Bates alleged that McQueen [***4] had breached the Agreement by clearing logging decks in locations on the property that Bates had not approved, by cutting timber that was not included in the sale, and by damaging Bates' property.

After the action was scheduled for trial, the circuit court entered an order appointing a new third arbitrator. According to the order, the two arbitrators originally selected by the parties had agreed to the appointment of Delmer D. Aylor as the new third arbitrator. The order also set forth the following relevant directives:

Delmer Aylor shall advise the respective parties of the hearing date of the arbitration, providing the respective parties with a minimum of 10 days prior notice of the hearing date, and that the arbitration shall be conducted in accordance with the provisions of *Sections 8.01-581.01 through 8.01-581.016* of the Code of Virginia, 1950, as amended.

[**568] Neither party objected to the order or its terms. In fact, the order reflects that both parties asked for its entry.

The parties do not dispute that, after Aylor's appointment, he met with Bates for approximately two hours and viewed areas on Bates' property [***5] allegedly affected by McQueen's timber cutting. The parties further agree that Bates also provided some information to the arbitrator whom he had originally selected.

Approximately six months after Aylor's appointment, he and the arbitrator originally selected by McQueen issued a joint letter setting forth their resolution of the dispute between Bates and McQueen. In relevant part, the letter stated:

It has been determined by two forestry consultants that there is approximately \$ 20,000.00 of timber remaining under the above-mentioned agreement. We have agreed that Mr. David M. Bates shall pay Mr. John B. McQueen \$ 14,000.00 for the uncut portion of the timber covered under the above noted agreement. Mr. David M. Bates may retain \$ 6,000.00 of this remaining settlement to repair the damaged game trails and any other damage that he may want to repair. Mr. Bates [*100] will also retain ownership of the remaining timber covered under this agreement after the \$ 14,000.00 payment has been made.

Bates subsequently filed a motion to vacate the arbitrators' award and to appoint a new arbitrator or arbitrators to hear and decide the dispute between the parties. In his motion, Bates asserted [***6] that the arbitrators had not conducted the arbitration in accordance with the circuit court's order and Virginia's Uniform Arbitration Act, *Code § § 8.01-581.01 through -581.016*, (the Act) because the arbitrators did not conduct a hearing; did not give any notice of a hearing to Bates or his counsel; and did not afford Bates an opportunity to be heard, to present evidence, or to cross-examine witnesses.

At a hearing on Bates' motion, the parties stipulated that "there was no hearing, no opportunity to present witnesses, no opportunity to cross-examine witnesses or be represented by counsel." The circuit court denied the motion and entered an order confirming the arbitrators' award and directing Bates to pay McQueen the sum of \$ 14,000. The court also granted McQueen 60 days in which to file a motion for his costs and attorney's fees. Despite Bates' subsequent objection that only the arbitrators could award attorney's fees and did not do so, the circuit court concluded McQueen was entitled to an award of attorney's fees in the amount of \$ 10,000 and certain costs. The circuit court questioned whether the Act "would permit [it] to go beyond the contract[] [***7] because it looks like the arbitrators could have done it all" but nevertheless decided that the "contract was broad enough for attorney's fees." These appeals ensued.

ANALYSIS

On appeal, Bates raises two issues: (1) whether the circuit court erred in affirming the arbitrators' award that resulted from an arbitration proceeding that did not comply with the provisions of the Act; and (2) whether the circuit court erred in awarding attorney's fees to McQueen. We will address the issues in that order. In doing so, we are mindful that the party attacking an arbitration award "bears the burden of proving the invalidity

of the award." *Trustees of Asbury United Methodist Church v. Taylor & Parrish, Inc.*, 249 Va. 144, 153, 452 S.E.2d 847, 852 (1995) (citing *Hower in Residential Sales Corp. v. Century Realty of Tidewater, Inc.*, 235 Va. 174, 179, 365 S.E.2d 767, 770, 4 Va. Law Rep. 2116 (1988)).

[*101] As an initial matter, McQueen argues that, while the Agreement required a dispute about the "cutting operation" to be resolved by arbitration, it did not specify any procedures for conducting the arbitration proceeding, such as a formal hearing. Thus, according to McQueen, the [***8] circuit court had no authority to impose the requirement of a hearing and the failure to conduct one was harmless error. That argument has no merit in light of the terms of the circuit court's order appointing Aylor as the third arbitrator and directing that the arbitration be conducted in accordance with the provisions of the Act. Both parties requested entry of that order. Thus, the arbitration of the present dispute concerning the "cutting operation," [**569] irrespective of the terms of the Agreement, had to comply with the provisions of the Act. n2 See *Code § 8.01-581.04* (setting out certain procedural requirements for an arbitration proceeding "unless otherwise provided by the agreement").

n2 As a preliminary matter, McQueen also contends that Bates' motion to vacate the arbitrators' award did not comply with the procedural requirements of *Code § 8.01-581.010* because Bates styled his pleading as a "motion" rather than as a "petition" and because he did not cite or otherwise address any of the statutory criteria set forth in that provision. This argument has no merit. Bates stated in his motion that the arbitrators failed to follow the provisions of the Act because there was no hearing; no notice of a hearing; and no opportunity to be heard, to present evidence, or to cross-examine witnesses.

[***9]

In pertinent part, the Act requires arbitrators, unless otherwise provided by an agreement, to "appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing." *Code § 8.01-581.04(1)*. Continuing, "the parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing." *Code § 8.01-581.04(2)*. A party also has the right to be represented by an attorney at any hearing conducted under the Act. *Code § 8.01-581.05*.

Despite these statutorily-mandated requirements, the terms of the circuit court's order, and the parties' stipulation before the circuit court that there was no hearing; no notice of a hearing; and no opportunity to be heard, to present evidence, and to cross-examine witnesses, McQueen contends that the circuit court did not err by refusing to vacate the arbitrators' award. This is so, according to McQueen, because Bates failed to show that he suffered any prejudice as a result of the informal manner in which [***10] the arbitrators in this case conducted the arbitration proceeding. McQueen also argues that Bates "waived and/or is estopped" from complaining [*102] about the arbitrators' failure to conduct a formal hearing because Bates participated in the informal process by meeting with and/or supplying information to two of the three arbitrators and by failing to request a formal hearing before the arbitrators. We do not agree with McQueen's arguments.

The provisions of *Code § 8.01-581.010* provide the exclusive circumstances under which a circuit court can vacate an arbitration award. *Lackman v. Long & Foster Real Estate, Inc.*, 266 Va. 20, 26, 580 S.E.2d 818, 822 (2003); see also *Signal Corp. v. Keane Fed. Sys., Inc.*, 265 Va. 38, 45, 574 S.E.2d 253, 256 (2003) ("circuit court's review of an arbitration award is limited to the specific statutory criteria contained in *Virginia's Uniform Arbitration Act*"); *Trustees of Asbury United Methodist Church*, 249 Va. at 153, 452 S.E.2d at 852 (same). As relevant to this case, a circuit court shall vacate an arbitration award when "the arbitrators refused to postpone the hearing [***11] upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 8.01-581.04, in such a way as to substantially prejudice the rights of a party[.]" *Code § 8.01-581.010(4)*.

The repeated use of the term "the hearing" in *Code § 8.01-581.010(4)* presupposes that the arbitrators conducted a hearing. However, as the parties stipulated, there was no hearing before the arbitrators in this case. Without "the hearing" having taken place, it was not necessary for Bates to prove that his rights were "substantially prejudiced" or that evidence he would have presented was "material to the controversy" in order to have the arbitration award vacated under *Code § 8.01-581.010(4)*. Nor did Bates waive his objection to the lack of a hearing. He raised the issue in his motion to vacate the arbitration award, which was the first opportunity to do so after the arbitrators decided the dispute without conducting a hearing. Thus, we conclude that the circuit court erred by failing to vacate the arbitration [***12] award. Cf. *Cargill v. Northwestern Nat'l Ins. Co.*, 316 Pa. Super. 139, 462 A.2d 833, 834-35 (Pa. 1983) (at common law, the denial of a hearing is sufficient basis to

270 Va. 95, *, 613 S.E.2d 566, **;
2005 Va. LEXIS 60, ***

vacate an arbitration award). In short, the failure to conduct "the hearing" clearly intended by the terms of *Code* § 8.01-581.04, unless otherwise [**570] provided by an agreement, and by the provisions of *Code* § 8.01-581.010(4) was tantamount to no arbitration. Unless parties agree otherwise, a hearing is a fundamental part of the arbitration process because "the arbitrators are the final judges of both law [*103] and fact, their award not being subject to reversal for a mistake of either." *Id.*; see *Signal Corp.*, 265 Va. at 46, 574 S.E.2d at 257 (refusing to adopt "manifest disregard of the law" as basis to vacate arbitration award).

Turning now to Bates' challenge to the circuit court's award of attorney's fees to McQueen, we conclude that the question whether McQueen is entitled to an award of attorney's fees under the terms of the Agreement, and if so, the amount of that award, is a matter to be determined by arbitration. Cf. [***13] *Lee v. Mulford*, 269 Va. 562, 611 S.E.2d 349, 352 (2005) ("Absent agreement of the parties with the concurrence of the court, or pursuant to contract or statute with specific provisions, a litigant is not entitled to bifurcate the issues and have the matter of attorney's fees decided by the trial court in post-verdict proceedings."). The parties agreed to arbitrate any disagreement "concerning the cutting operation" under the

Agreement. The dispute between the parties entailed, in part, the question of McQueen's access to the property. Among other things, Bates' "representations and warranties" to McQueen in the Agreement included "adequate vehicular access from the sale area to a public road," the breach of which subjected Bates to payment of attorney's fees incurred by McQueen in connection with the default. We note, however, that the provisions of *Code* § 8.01-581.012 provide that the "costs of the application [to confirm, modify, or correct an arbitration award] and of the proceedings subsequent thereto, and disbursements may be awarded by the court."

CONCLUSION

For the reasons stated, we will reverse the judgments of the [***14] circuit court and remand for further proceedings consistent with this opinion. Since the arbitration award will be vacated on the grounds set forth in *Code* § 8.01-581.010(4), the circuit court may order a hearing before the original arbitrators or "their successors appointed in accordance with § 8.01-581.03." *Code* § 8.01-581.010(5).

Reversed and remanded.