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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1879**

Rashed Ferdous, et al.,
Respondents,

Regina Mustafa,
Respondent,

vs.

Omar Dahir, et al.,
Appellants.

**Filed August 31, 2020
Affirmed
Florey, Judge**

Olmsted County District Court
File No. 55-CV-19-2832

Ken D. Schueler, John T. Giesen, Dunlap & Seeger, PA, Rochester, Minnesota (for
respondents Rashed Ferdous, et al.)

Regina Mustafa, Rochester, Minnesota (pro se respondent)

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Considered and decided by Florey, Presiding Judge; Segal, Chief Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellants challenge the district court's denial of their motion to vacate an arbitration award, arguing that there was no agreement by the parties to arbitrate and that the arbitration panel exceeded the scope of its authority. In their cross-appeal, respondents raise the ecclesiastical abstention doctrine as an alternative argument as to why the arbitration award should remain undisturbed. We affirm.

FACTS

Appellants Omar Dahir and Faduma Issa and respondents Rashed Ferdous and Regina Mustafa served as board members for an incorporated non-profit mosque called Masjed AbuBakr Al-Seddiq, Inc. (MAAS or the mosque). MAAS is governed by a board of directors (the board) and has operated pursuant to a series of bylaws. Under the terms of a 2016 settlement agreement, following several years of litigation, a new board was appointed and new bylaws were adopted.

Article XIV of the current bylaws provides:

ARTICLE XIV: Dispute Resolution Process

Section I: Disputing parties: disputing parties include any of the entities described in Article III or any of the employees of MAAS.

Section II: Resolution process: In a case [sic] of any dispute between any of the disputing parties, they must settle their disputes using the following organizations listed. Under no circumstances, any of the disputing parties will resort to any lawsuits [sic].

1. Muslim American Society (MAS—MN)
2. Islamic Center of Minnesota, Fridley, MN

3. Council of American Islamic Relations. (CAIR — MN)
 4. Assembly of Muslim Jurists of America
 5. Islamic Society of North America (ISNA)
- a) The disputing parties will seek a resolution from the above named organizations in sequence. Following are the scenarios when they can move to the next organization in the above sequence:
 1. The first organization refuses to rule on it in writing or via email.
 2. The first organization fails to resolve the issue within the time frame they agreed upon.
 - b) Decision [sic] given by the organization above is final and legally binding on everyone involved.
 - c) If one of the parties in dispute becomes unwilling to conform to this process, then the demands of the other disputing party will be legally binding on everyone involved.

Section III: Amendment for Dispute Resolution Process: In order to update this article, in addition to the process described in Article XI, a written approval is needed from the first organization in the list in Section II above.

All members serving on the board also signed a Board Member Agreement, which reads as follows:

I willfully agree to join MAAS board of directors. I agree that I will abide by the by law of the organization. I also agree that under no circumstances I will file any lawsuit against any of the entities of MAAS or the organization itself. If any dispute were to occur, I agree to follow the dispute resolution process outlined in the bylaw. [sic]

The dispute leading to this appeal arises from a board-member disagreement regarding renovations to or demolition/reconstruction of the mosque, which had developed significant structural issues causing safety concerns. According to the board minutes, the board remained “in dispute regarding construction options” after a meeting held on June

10, 2018. Based on this continued deadlock, “[the] Board agreed that br. Koshin will reach out to MAS-MN ASAP to come and resolve our dispute and make decision for us [MAAS Bylaw section XIV section II].” At this time, the board had six members: Koshin, Abdel-Aziz, Ferdous, Mustafa, Dahir, and Issa.

On June 20, 2018, Koshin emailed Asad Zaman, Executive Director of the Muslim American Society of Minnesota (MAS-MN), with the subject line, “Request for Dispute Resolution,” and the following message:

I’m writing to find out if you would be interested to mediate the Masjed AbuBakr Al-Seddiq Rochester, MN board members dispute for future of the building, etc. From what I understand, this method of conflict resolution might work well for us to reduce stress, division and further conflict among the board members. [sic]

In early July, MAS-MN “agree[d] to conduct the dispute resolution as described in [MAAS] bylaws.”

On July 10, Zaman sent a follow up email to Koshin stating, “Before we can start the process correctly, we need a standard Dispute Resolution Agreement (attached) signed by each board member. Please sign and send this document to me by the end of Friday, July 13: 2018.” The Dispute Resolution Agreement reads:

In accordance with MAAS bylaw Article XIV, section II (b), I agree to accept any decision made by the Muslim American Society of Minnesota (MAS-MN) related to any matter under dispute as final and legally binding upon me. I also agree to assist MAS-MN in this dispute resolution process as needed. This includes, but is not limited to, 1) providing information / documents / emails as requested. 2) Being available to meet with MAS-MN in person or via phone etc.

Only three board members—Abdel-Aziz, Ferdous, and Mustafa—signed this Agreement. In an email to Zaman sent on July 23, Koshin wrote, “On behalf of the MAAS Inc Board, I would like to thank you for accepting to serve as mediator between members of the MAAS Inc Board [sic].”

On September 22, 2018, Koshin resigned, and Dahir became acting chair of the board. That same fall, Abdel-Aziz also resigned, leaving the board with four remaining members: Ferdous, Mustafa, Dahir, and Issa. Significant disputes continued. At the urging of Ferdous and Mustafa, who brought additional complaints beyond the construction issues to MAS-MN’s attention, the dispute-resolution process moved forward that winter.

MAS-MN appointed a three person “Arbitration Panel” and scheduled the hearing for the morning of February 2, 2019. MAS-MN included all four remaining board members on this correspondence, requesting that each member attend the scheduled hearing and send a written complaint with all relevant evidence for their positions as well as recommendations for next steps. The email also stated, “if any party chooses not to provide input, the panel will make a decision WITHOUT their input,” and referenced Article XIV, Section II(c) of MAAS’s bylaws (“If one of the parties in dispute becomes unwilling to conform to this process, then the demands of the other disputing party will be legally binding on everyone involved.”).

The hearing did not occur on the scheduled date due to protests by Dahir, and the panel deemed this initial encounter to be a “Pre-Hearing Conference.” On February 8, Zaman, on behalf of MAS-MN, sent an email clarifying questions raised by Dahir and Imam Mahmoud—the mosque’s religious leader who had been invited to testify at the

Arbitration. This correspondence stated, “This is NOT a mediation process. This is an arbitration process as mandated by the bylaws of MAAS and governed by Minnesota Statute §§572B.” It also referenced the “initial list of items” in dispute that had been provided by Ferdous on behalf of respondents, and invited appellants to submit a list of complaints.

The rescheduled hearing was held on February 10, 2019. Respondents submitted complaints prior to the hearing and testified before the panel. Appellants did not attend or participate in the hearing; their only submission to the Arbitration Panel was to assert the position that the arbitration process was invalid.

On February 14, 2019, the arbitration panel issued its award. The specific issues addressed¹ by the panel were the following:

- A. Is board member Mr. Omar Dahir in violation of his duties of care, loyalty and obedience to Masjed Abubakr Al-Seddiq and its Board of Directors?
- B. What disputes or issues, if any, must be resolved for the Board to be able to function properly and govern the affairs of MAAS?

The panel found that Dahir breached his fiduciary duties to MAAS and the board, causing significant harm to the organization and its assets, and removed him from the

¹ In a separate section of its award, the arbitration panel explained the process it used to determine which issues, of the many that were submitted, it would consider. The panel determined that: “Of the multiple disputes and controversies raised, and the various remedies sought by the Parties, the Arbitrators have determined that the question by the First Party of the alleged violations of the duties of care, loyalty and obedience on the part of Mr. Omar Dahir to be the key issue which, if resolved, will allow MAAS to resolve the remaining disputes in the normal course of business without the need to arbitrate those remaining issues.”

board. The panel also instructed the board “to promptly convene a board meeting, to elect a board chair, and to fill open board seats to ensure a functional board.” “To ease this task” the panel suspended Article IV: Section XII. (b), Article IV: Section XII. (c), Article IV: Section IV. (b), and Article IV: Section I. (f) of MAAS Bylaws for one month.

In April 2019, appellants filed a motion in district court to vacate the arbitration decision. On September 27, 2019, the district court confirmed the arbitration award and denied appellants’ motion to vacate. The district court concluded that, even though the word “arbitration” was not specifically used, Section II(b) of Article XIV of the bylaws could only be read as requiring arbitration based on the description of the required process therein. The court also concluded that the remedies ordered by the panel—removal of Dahir from the board and temporary suspension of certain provisions of the bylaws to allow for timely reformation of a functioning board—did not exceed the arbitrators’ authority based on the panel’s statutory authority under Minn. Stat. § 572B.21 (2018) and the broad authority granted by the “any dispute” language in Article XIV.

D E C I S I O N

Agreement to arbitrate

Appellants first argue the arbitration award must be vacated because there was no agreement to arbitrate the board’s dispute. A court shall vacate an arbitration award if “there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection . . . not later than the commencement of the arbitration hearing.” Minn. Stat. § 572B.23(a)(5) (2018).

Whether a party has agreed to arbitrate a particular dispute is a matter of contract interpretation, which this court reviews de novo. *See Johnson v. Piper Jaffray, Inc.*, 530 N.W.2d 790, 795 (Minn. 1995). “In evaluating whether the parties agreed to arbitrate the present dispute, we remain aware that we should resolve any doubts concerning the scope of arbitrable issues in favor of arbitration,” including when the issue on appeal involves “the construction of the contract language itself.” *Id.* (quotation omitted).

Appellants argue the parties did not have an agreement to arbitrate because the board only agreed to commence the dispute-resolution process pursuant to MAAS’s bylaws and, under appellants’ reading, Article XIV is silent on what dispute-resolution process could be used. Accordingly, appellants contend the disputing board members needed to “agree to a particular method [of] dispute resolution process” and any such agreement was never to the process of arbitration. Appellants suggest the parties intended to use mediation, which they argue is evidenced by former Board Chair Koshin’s references to “mediation” and “mediate” in his initial email correspondence with Zaman to request assistance from MAS-MN in June and July of 2018.

We agree with the district court’s analysis on this issue. The plain language of Article XIV mirrors the definition of arbitration. Article XIV states that “any dispute” must be submitted for resolution to one of the listed organizations and this “decision given by the organization . . . is *final and legally binding* on everyone involved.” (Emphasis added) “Under no circumstances” can “any of the disputing parties . . . resort to any lawsuits.” The above-described dispute-resolution process, which the board unanimously invoked during their June 10, 2018 meeting, and which each member agreed to abide by in

their signed board-member agreements, is consistent with the definition of arbitration, not mediation. Compare *Black's Law Dictionary* 125 (10th ed. 2014) (defining “arbitration” as “[a] dispute-resolution process in which the disputing parties choose one or more neutral third parties to make a final and binding decision resolving the dispute”) with *Black's Law Dictionary* 1130 (10th ed. 2014) (defining “mediation” as “[a] method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution”). Although at times some of the parties used the term mediation, as respondents argue: “mediation would not achieve the result that Article XIV unambiguously requires.” Based on the plain language of Article XIV, the district court did not err in concluding there was an agreement to arbitrate.

Scope of authority

Appellants also argue the arbitration award must be vacated because the panel exceeded its scope of authority. Under Minn. Stat. § 572B.21(c) (2018), “an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding.” A court shall vacate an arbitration award if the arbitrator exceeded his or her powers. Minn. Stat. § 572B.23(a)(4) (2018). This court determines the scope of an arbitrator’s authority de novo, and “[t]he burden of establishing that the arbitrator exceeded his authority is on the party who challenges the award.” *Klinefelter v. Crum & Forster Ins. Co.*, 675 N.W.2d 330, 333 (Minn. App. 2004). Courts will assume that an arbitrator did not exceed his or her powers unless there is a showing “that the arbitrators have clearly exceeded the powers granted to them in the arbitration agreement.”

Seagate Tech., LLC v. W. Dig. Corp., 854 N.W.2d 750, 760-61 (Minn. 2014) (quotation omitted).

Appellants maintain that “the one and only dispute . . . was regarding whether or not to demolish the existing MAAS building and construct a new Mosque facility.” They point to the June 10, 2018 board meeting, where the dispute-resolution process was initiated by the board, arguing there is no evidence the board contemplated other issues needing resolution. Because the sole issue triggering the initiation of the dispute-resolution process was the mosque construction dispute, appellants assert the panel “wrongly imposed its own ‘policy choice’” and “exceeded its authority” by removing Dahir from the board, suspending certain provisions of the bylaws, and ordering new elections.

An arbitrator’s ability to arbitrate an issue is determined by the arbitration agreement itself and is not necessarily limited to the issue that initiated the dispute-resolution process. *Seagate*, 854 N.W.2d at 761. Here, the bylaws creating the agreement to arbitrate broadly provide that “*any dispute* between any of the disputing parties . . . must [be] settle[d] . . . using the following organizations listed” and “[u]nder no circumstances . . . will [any parties] resort to any lawsuits.” (Emphasis added). While the issue that started the arbitration process was the building dispute, the record indicates that additional issues beyond that dispute were submitted to the arbitration panel for resolution prior to the February 2019 hearing. These additional issues included allegations of Dahir’s misconduct and breach of duty, which both fall within the broad “any dispute” language of Article XIV. Despite multiple requests for their input, appellants chose not to participate in the arbitration process, including framing the issues to be determined by the panel. A

party's nonconformity to the resolution process does not limit the panel's broad authority as granted in the bylaws. *See* Article XIV, Section II(c).

Appellants further contend that board-member removal and discipline is exclusively governed by a separate section of the bylaws and therefore was beyond the arbitration panel's authority. We remain unpersuaded. Based on the evidence that was presented at the arbitration hearing, as summarized by the panel, and the broad scope of authority granted under the "any dispute" language of Article VIX, appellants have not met their burden of showing the panel clearly exceeded its power. *See Seagate*, 854 N.W.2d at 761.

Ecclesiastical abstention doctrine

While appellants do not challenge the district's court's authority in this matter, respondents raised the issue of ecclesiastical abstention on cross-appeal as an alternative argument for upholding the arbitration award. Because respondents abandoned this alternative theory in favor of their main argument in support of the district court's decision during oral argument, we need not address whether the ecclesiastical abstention doctrine should have been applied. For the reasons discussed above, the district court did not err in confirming the arbitration award.

Affirmed.