

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
FIRST DEPARTMENT

Matter of NRD GP LLC v. McCarthy

2026 NY Slip Op 02457 · No. Index No. 654694/22; Appeal No. 6027; Case No. 2024-06457 · Decided April 23, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed a judgment confirming a partial final arbitration award and awarding the respondent \$1,123,644.48. The court held that the petitioners failed to show that the arbitrator exceeded her authority, violated public policy, acted irrationally, or manifestly disregarded governing law, and upheld the arbitrator’s interpretation of contractual advancement rights.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, First Department                                                                                                                                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Renwick, P.J.; Kennedy, J.; Friedman, J.; Mendez, J.; Hagler, J.                                                                                                                                                                                                                                                                                                                                                                           |
| JURISDICTION          | New York Supreme Court, Appellate Division, First Department                                                                                                                                                                                                                                                                                                                                                                               |
| DECIDED               | April 23, 2026                                                                                                                                                                                                                                                                                                                                                                                                                             |
| DOCKET                | Index No. 654694/22; Appeal No. 6027; Case No. 2024-06457                                                                                                                                                                                                                                                                                                                                                                                  |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Petitioners appealed from a judgment awarding respondent \$1,123,644.48 and from an order denying their petition to vacate a partial final arbitration award and granting respondent's cross-petition to confirm the award.                                                                                                                                                                                                                |
| STANDARD OF REVIEW    | Judicial review of arbitration awards is extremely limited. Under CPLR 7511(b), an award may be vacated when the arbitrator exceeded her power, the award violates strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power. A court may not review the merits or substitute its own contractual interpretation merely because it would interpret the agreement differently. |
| PRECEDENTIAL VALUE    | Published; precedential decision of the Appellate Division, First Department, subject to revision before publication in the Official                                                                                                                                                                                                                                                                                                       |

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**PARTIES**

NRD GP LLC, et al. v. Colin McCarthy

**TOPICS**

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standard of review

commercial litigation

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arbitration

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**QUESTIONS PRESENTED**

1. Whether the partial final arbitration award should be vacated because the arbitrator exceeded her authority, violated strong public policy, was irrational, or clearly exceeded a specifically enumerated limitation on arbitral power.
2. Whether the arbitrator's interpretation of the parties' agreements concerning advancement of litigation fees was subject to judicial review or reversal under the manifest-disregard standard.
3. Whether JAMS Rule 19(d) authorized the arbitrator to issue a partial final award as an interim measure.

**HOLDINGS**

1. The award was properly upheld because petitioners failed to establish that the arbitrator exceeded her power, violated strong public policy, rendered an irrational award, or clearly exceeded a specifically enumerated limitation on arbitral power.
2. The arbitrator's interpretation of the agreements was rational and within her province; the court could not substitute its own interpretation or overturn the award merely because it might interpret the agreements differently.
3. The arbitrator did not exceed her authority because JAMS Rule 19(d) authorized her to grant necessary interim measures, including a partial final award.
4. The record did not establish manifest disregard because the arbitrator considered and extensively analyzed the contract language and applicable JAMS Rules rather than knowingly refusing to apply or ignoring a governing legal principle.

**KEY QUOTATIONS**

*"Judicial review of arbitration awards is extremely limited" (\*1)*

*"a court is bound by an arbitrator's factual findings and interpretation of a contract and cannot examine the merits of an arbitration award or substitute its own contractual interpretation." (\*1)*

*"the 'manifest disregard' standard does not permit review of the arbitrator's interpretation of the parties' contracts even if we were to disagree with the interpretation" (\*2)*

**FACTUAL BACKGROUND**

The parties' operative agreements provided for advancement of litigation fees, while an employment agreement was alleged to affect that advancement right. The arbitrator determined that the employment agreement did not preempt the advancement provisions and that respondent was entitled to advancement of fees incurred in the arbitration. The arbitrator treated advancement as distinct from indemnification, leaving any ultimate indemnification determination for the end of the arbitration, and issued a partial final award.

PROCEDURAL HISTORY

The arbitrator issued a partial final award concerning respondent's right to advancement of litigation fees incurred in the arbitration. Supreme Court, New York County, denied petitioners' application to vacate the award, granted respondent's cross-petition to confirm it, and entered a judgment awarding respondent \$1,123,644.48. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- American Intl. Specialty Lines Ins. Co. v Allied Capital Corp., 35 NY3d 64, 70 (2020)
- Matter of Falzone [New York Cent. Mut. Fire Ins. Co.], 15 NY3d 530, 534 (2010)
- Wien & Malkin LLP v Helmsley-Spear, Inc., 6 NY3d 471, 479, 481 (2006), cert dismissed, 548 US 940 (2006)
- Azrielant v Azrielant, 301 AD2d 269, 275 (1st Dept 2002), lv denied, 99 NY2d 509 (2003)
- Kudler v Truffelman, 93 AD3d 549, 550 (1st Dept 2012), lv denied, 19 NY3d 815 (2012)
- Cantor Fitzgerald Sec. v Refco Sec., LLC, 83 AD3d 592, 593 (1st Dept 2011)
- Matter of Nexia Health Tech., Inc. v Miratech, Inc., 176 AD3d 589, 591-592 (1st Dept 2019)

OPINION

Matter of NRD GP LLC v. McCarthy 2026 NY Slip Op 02457  
PER CURIAM.

Matter of NRD GP LLC v McCarthy - 2026 NY Slip Op 02457 skip to main content

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Matter of NRD GP LLC v McCarthy

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April 23, 2026

Appellate Division, First Department

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Law § 431.

This decision is uncorrected and subject to revision before publication in the Official Reports.

In the Matter of NRD GP LLC, et al. Petitioners-Appellants, v Colin McCarthy, Respondent-Respondent.

Decided and Entered: April 23, 2026|Index No. 654694/22|Appeal No. 6027|Case No. 2024-06457|Before: Renwick, P.J., Kennedy, Friedman, Mendez, Hagler, JJ.

McLaughlin & Stern, LLP, Garden City (John M. Brickman of counsel), for appellants.

Morrison & Foerster LLP, New York (Alexandra M. Avvocato of counsel), for respondent.

Judgment, Supreme Court, New York County (John J. Kelley, J.), entered October 2, 2024, awarding respondent the total amount of \$1,123,644.48, and bringing up for review an order, same court and Justice, entered on or about July 2, 2024, which denied the petition to vacate a partial final arbitration award, and granted respondent's cross-petition to confirm the award, to the extent appealed from, unanimously affirmed, without costs.

Supreme Court properly upheld the arbitrator's partial final award because petitioners failed to demonstrate that the arbitrator exceeded her power or that the award violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power (CPLR 7511[b]; *see American Intl. Specialty Lines Ins. Co. v Allied Capital Corp.*, 35 NY3d 64, 70 [2020]). Judicial review of arbitration awards is extremely limited (*see Matter of Falzone [New York Cent. Mut. Fire Ins. Co.]*, 15 NY3d 530, 534 [2010]; *Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471, 479 [2006], *cert dismissed* 548 US 940 [2006]), and an award will not be overturned merely because a court believes its interpretation of the contract would be better (*see Azrielant v Azrielant*, 301 AD2d 269, 275 [1st Dept 2002], *lv denied* 99 NY2d 509 [2003]).

Here, the parties disagree as to how the contract provisions should be interpreted and whether respondent, under the operative agreements, is entitled to an advance of the litigation fees incurred in the arbitration. The arbitrator found that nothing in the employment agreement preempts the operative agreements' advancement right. Supreme Court properly recognized that a court is bound by an arbitrator's factual findings and interpretation of a contract and cannot examine the merits of an arbitration award or substitute its own contractual interpretation. In any event, the arbitrator's interpretation of the contracts did not change the agreements' terms (*cf. Kudler v Truffelman*, 93 AD3d 549, 550 [1st Dept 2012], *lv denied* 19 NY3d 815 [2012]), but rather was a rational interpretation of the agreements that the arbitrator was empowered to undertake. Nor did the arbitrator confuse the right to advancement with the right to indemnification. Instead, the arbitrator found that the right to advancement was a distinct right and that a determination of respondent's right, if any, to indemnification would be conducted at the end of the arbitration.

The arbitrator did not exceed her authority under JAMS rule 19(d), which provides that she "may grant whatever interim measures are deemed necessary," which "may take the form" of a partial final award.

Finally, the interpretation of the applicable contract terms was within the province of the arbitrator, and the

"manifest disregard" standard does not permit review of the arbitrator's interpretation of the parties' contracts even if we were to disagree with the interpretation (*see Cantor Fitzgerald Sec. v Refco Sec., LLC*, 83 AD3d 592, 593 [1st Dept 2011]). The record does not establish that the arbitrator knew of a governing legal principle yet either refused to apply it or ignored it altogether (*see Wien & Malkin LLP*, 6 NY3d at 481). On the contrary, it is apparent from a review of the arbitration award that the arbitrator considered the language of the contract and the applicable JAMS Rules as identified by the parties and analyzed both extensively (*see Matter of Nexia Health Tech., Inc. v Miratech, Inc.*, 176 AD3d 589, 591-592 [1st Dept 2019]).

We have considered petitioners' remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 23, 2026

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PER CURIAM.

Matter of NRD GP LLC v McCarthy - 2026 NY Slip Op 02457

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[\*1]

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