IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-01351-MEH

A. KERSHAW, P.C.,

Petitioner,

v.

SHANNON L. SPANGLER, P.C.,

Respondent.

ORDER CONFIRMING ARBITRATION AWARD AND DENYING APPLICATION TO VACATE ARBITRATION AWARD

Michael E. Hegarty, United States Magistrate Judge.

Before the Court is Petitioner's Application to Vacate Arbitration Award [filed June 6, 2016; ECF No. 1] and Respondent's Application to Confirm Arbitration Award [filed June 28, 2016; ECF No. 7].[1] Because Kershaw has not met her burden of showing the arbitrator committed an error listed in 9 U.S.C. § 10 or acted in manifest disregard of the law, the Court denies Kershaw's Application to Vacate and grants in part and denies in part Spangler's Application to Confirm.[2]

BACKGROUND

During the spring of 2013, Kershaw and Spangler formed a Missouri limited liability company named Knowledge Strategy Solutions, LLC ("KSS Missouri") to provide data and

[1] Petitioner and Respondent are professional corporations wholly owned by Anne Kershaw and Shannon Spangler, respectively. Final Award ¶ 9. Although the parties are professional corporations, for simplicity I will refer to each of them by their individual owners' names, "Kershaw" and "Spangler," and as "she" rather than "it."

[2] On July 5, 2016, the parties consented to this Court's jurisdiction pursuant to 28 U.S.C. § 636(c) and D.C. Colo. LCivR 40.1(c). ECF No. 9.

knowledge management consulting services. Final Award ¶¶ 9–10; ECF No. 7-1.[3] The parties' Operating Agreement created a capital account for each party, which consisted of their capital contributions and share of each month's revenue. Final Award ¶ 13. The Operating Agreement provided specific formulas for allocating monthly revenue, which took into account which party generated the client and who performed the work for which the revenue was earned. *Id.*

During the spring of 2014, Spangler decided to withdraw from KSS Missouri due to being diagnosed with an eye disease. *Id.* at ¶ 14. On June 26, 2014, after the parties exchanged various communications regarding Spangler's exact withdrawal date, Kershaw filed Articles of Termination on behalf of KSS Missouri without informing Spangler. *Id.* at ¶ 33. Despite KSS Missouri's termination, the parties did not enact a resolution of dissolution, conduct windup procedures, or distribute their capital balances. *Id.* at ¶¶ 40–49. Approximately one month after Kershaw filed Articles of Termination, Kershaw registered a New York LLC also named Knowledge Strategy Solutions ("KSS NY") to perform essentially the same business as KSS Missouri. *Id.* at ¶ 34.

Spangler subsequently filed suit in Missouri state court, asserting six claims for relief arising out of Kershaw's actions during the dissolution of KSS Missouri. *Id.* at ¶ 3. On October 14, 2014, the Missouri state court referred three of Spangler's claims to binding arbitration: (1) breach of the operating agreement for failure to properly wind up and terminate KSS Missouri (Count One), (2) breach of the operating agreement for refusing to distribute capital accounts before terminating KSS Missouri (Count Three), and (3) breach of fiduciary duty (Count Four). *Id.*; ECF No. 1-3. The court

[3] Because neither party contests the arbitrator's factual findings, and because "the factual findings of the arbitrator are insulated from judicial review," the Court adopts the arbitrator's findings for purposes of this Order. *See Denver & Rio Grande W. R.R. Co. v. Union Pac. R.R. Co.*, 119 F.3d 847, 849 (10th Cir. 1997); *see also Hermanns v. Albertson's, Inc.*, 203 F. App'x 916, 918 (10th Cir. 2006) (holding that courts are not permitted to disturb an arbitrator's factual findings).

reserved jurisdiction on Counts Two, Five, and Six. ECF No. 1-3. Relevant here, the court did not submit Count Two—a claim over allegedly incorrect monthly revenue draws—because the Operating Agreement specifically excluded from arbitration disputes over member compensation. On August 3, 2015, Kershaw filed a bankruptcy petition on behalf of KSS NY, which automatically stayed the arbitration proceedings. Final Award ¶ 4. On October 21, 2015, the Bankruptcy Court for the Southern District of New York lifted the automatic stay subject to the restriction that the arbitrator not dispose of any avoidance claims against KSS NY. *Id.*; ECF No. 1-4.

The arbitrator held a final hearing from November 30, 2015 through December 3, 2015 and issued a Final Award on April 18, 2016. Final Award ¶ 5. Before reaching the merits of the claims, the arbitrator held that "KSS Missouri was dissolved and terminated as a legal entity in fact and under Missouri law by certain actions taken by Kershaw in the summer of 2014." *Id.* at ¶ 31. The arbitrator analyzed seemingly contradictory provisions in the Operating Agreement and found that, "based on the intention of the parties and their conduct before a dispute arose," Spangler's withdrawal automatically dissolved the LLC. *Id.* at ¶¶ 16–17. Moreover, based on numerous communications between the parties discussing the terms of Spangler's withdrawal and actions taken by Kershaw directly before and after June 30, 2014, such as the filing of articles of termination with the Missouri Secretary of State, the "parties had reached a mutual agreement that Spangler's effective date of withdrawal from KSS would be June 30, 2014." *Id.* at ¶¶ 26–27.

Proceeding to the merits, the arbitrator found Kershaw liable on all three claims. *Id.* at ¶ 69. On Count One, the arbitrator held Kershaw breached the Operating Agreement by failing to conduct a proper windup procedure and by failing to conduct herself in a fair and proper manner, as required by the Agreement's "best endeavors clause." *Id.* at ¶ 46. On Count Two, the arbitrator held

Kershaw breached Section 4.07(b) of the Operating Agreement by refusing to distribute Spangler's capital account. *Id.* at ¶¶ 47–49. The arbitrator imposed *in personam* liability against Kershaw in the amount of Spangler's capital account as of the date of her withdrawal from KSS Missouri ($97,041.09). *Id.* at ¶ 49. On Count Four, the arbitrator held that Kershaw's failure to timely distribute Spangler's capital account and her failure to negotiate over the value of KSS Missouri's intangible assets was a breach of her fiduciary duties to Spangler. *Id.* at ¶¶ 59–60. However, the arbitrator declined to award damages with respect to the withheld intangible assets, because they were "in the possession and control of KSS New York, which is currently under bankruptcy protection." *Id.* at ¶ 61. In sum, the arbitrator found for Spangler on each of her claims for relief and awarded damages totaling $97,041.09, plus $40,974.28 for arbitration expenses and costs. *Id.* at ¶ 80.

LEGAL STANDARDS

"Once a dispute is properly before an arbitrator, the function of the courts in reviewing the arbitrator's decision is quite limited." *Denver & Rio Grande W. R.R. Co. v. Union Pac. R.R. Co.*, 119 F.3d 847, 849 (10th Cir. 1997). "[G]reat deference is owed to the arbitrator's decision. Indeed, the standard of review of arbitral awards is 'among the narrowest known to the law.'" *U.S. Energy Corp. v. Nukem, Inc.*, 400 F.3d 822, 830 (10th Cir. 2005) (quoting *Litvak Packing Co. V. United Food & Commercial Workers*, 886 F.2d 275, 276 (10th Cir. 1989)). "Errors in either the arbitrator's factual findings or his interpretation of the law . . . do not justify review or reversal on the merits of the controversy." *Denver & Rio Grande W. R.R. Co.*, 119 F.3d at 849; *see also Oxford Health Plans, LLC v. Sutter*, 133 S. Ct. 2064, 2068 (2013) ("Because the parties 'bargained for the arbitrator's construction of their agreement,' an arbitral decision 'even arguably construing or

applying the contract' must stand, regardless of a court's view of its (de)merits." (quoting *E. Associated Coal Corp. v. Mine Workers*, 531 U.S. 57, 62 (2000))); *Hermanns v. Albertson's, Inc.*, 203 F. App'x 916, 918 (10th Cir. 2006) ("[Courts] lack the authority to review whether the arbitrator rightly or wrongly decided the matter and can only examine whether the arbitrator's decision 'draws its essence from the agreement.'" (quoting *Pub. Serv. Co. of Colo. v. Int'l Bd. of Elec. Workers*, 902 F.2d 19, 20 (10th Cir. 1990))).

A court may vacate an arbitration award for one of the four reasons listed in the Federal Arbitration Act ("FAA") or one of the judicially created reasons, such as violations of public policy or manifest disregard of the law.[4] *Adviser Dealer Servs. v. Icon Advisers, Inc.*, 557 F. App'x 714, 717 (10th Cir. 2014). Section 10 of the FAA permits a court to vacate an arbitration award:

> (1) where the award was procured by corruption, fraud or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where 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

[4] In light of the Supreme Court's statement in *Hall Street Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 584 (2008) that 9 U.S.C. §§ 10–11 "provide the FAA's exclusive grounds for expedited vacatur and modification" of arbitration awards, some courts have questioned whether an arbitrator's decision can still be overturned for reasons outside of those enumerated in the FAA. *See Hosier v. Citigroup Glob. Mkts., Inc.*, 835 F. Supp. 2d 1098, 1102 (D. Colo. 2011) (refusing to decide whether courts can still vacate arbitration awards for manifest disregard of the law); *Frazier v. CitiFinancial Corp., LLC*, 604 F.3d 1313, 1324 (11th Cir. 2010) (holding that the manifest disregard standard did not survive *Hall Street*); *Citigroup Glob. Mkts. v. Bacon*, 562 F.3d 349, 355 (5th Cir. 2009) (holding that manifest disregard is no longer a basis for vacating awards under the FAA). The Tenth Circuit has specifically declined to decide whether the manifest disregard standard applies after *Hall Street*. *Abbott v. Law Office of Patrick J. Mulligan*, 440 F. App'x 612, 619–20 (10th Cir. 2011). However, although not directly addressing whether the manifest disregard standard survives *Hall Street*, the Tenth Circuit has stated since *Hall Street* that arbitration awards can be overturned for manifest disregard of the law. *See Adviser Dealer Servs. v. Icon Advisers, Inc.*, 557 F. App'x 714, 717 (10th Cir. 2014). Therefore, because the Tenth Circuit seems to assume manifest disregard of the law continues to apply, and because its application is ultimately inconsequential in this case, the Court will assume for the purposes of this Order that an arbitration award may be vacated when the arbitrator acts in manifest disregard of the law.

> to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a). Additionally, vacating an award because of manifest disregard of the law requires that the arbitrator acted with "willful inattentiveness to the governing law." *ARW Expl. Corp. v. Aguirre*, 45 F.3d 1455, 1463 (10th Cir. 1995); *see also Dominion Video Satellite, Inc. v. Echostar Satellite, LLC*, 430 F.3d 1269, 1275 (10th Cir. 2005). "[A] finding of manifest disregard means the record will show the arbitrators knew the law and explicitly disregarded it." *Bowen v. Amoco Pipeline Co.*, 254 F.3d 925, 932 (10th Cir. 2001). Merely "erroneous interpretations or applications of law are not reversible." *ARW Expl. Corp.*, 45 F.3d at 1463.

ANALYSIS

On June 6, 2016, Kershaw filed the present Application to Vacate Arbitration Award with this Court. *See* Application to Vacate, ECF No. 1. Kershaw's Memorandum of Law in Support of her Application to Vacate sets forth three arguments for vacating the Final Award: (1) the Final Award is precluded by the bankruptcy court's Lift Stay Order, (2) the arbitrator violated Missouri Law, and (3) the arbitrator exceeded the authority given to him by the Operating Agreement and the Jackson County Circuit Court's Order. Mem. of Law in Supp. of Appl. to Vacate, ECF No. 1-13. The Court finds each of Kershaw's arguments to be without merit, and therefore, denies her Application to Vacate.

I. The Final Award is not Precluded by the Bankruptcy Court's Order.

Kershaw first argues the Court should vacate the Final Award under 9 U.S.C. § 10(4), because the arbitrator exceeded his authority by violating the bankruptcy court's order. Mem. of Law in Supp. of Appl. to Vacate 4. The bankruptcy court's Lift Stay Order prohibited the arbitrator

from determining an avoidance action—*i.e.* a claim to recover a debtor's property before the commencement of a bankruptcy case. ECF No. 1-4. According to Kershaw, because the arbitrator required her to pay a KSS capital account to Spangler, the Final Award requires distribution of a KSS asset in violation of the Lift Stay Order. Mem. of Law in Supp. of Appl. to Vacate 4.

The Court rejects Kershaw's argument and holds the arbitrator did not violate the Lift Stay Order, because the arbitrator did not require the distribution of any KSS NY assets. The arbitrator specifically determined that the award was against Kershaw personally, and not KSS NY. *See* Final Award ¶ 49 ("I determine this breach of contract claim to give rise to *in personam* liability against Kershaw P.C."). The arbitrator recognized that the Lift Stay Order prohibited him from awarding KSS NY's assets and stated that whether his determination also gives rise to a claim for KSS NY's assets is within the purview of the bankruptcy court. *Id.*

Moreover, the arbitrator's refusal to award distribution of KSS Missouri's intangible assets demonstrates his attentiveness to his jurisdictional limits. According to the arbitrator, although the Operating Agreement entitled Spangler to the value of KSS Missouri's intangible assets, the arbitrator did not have jurisdiction to award them paid to Spangler, because "the intangible assets in question are currently in the possession and control of KSS New York, which is currently under bankruptcy protection." *Id.* at ¶ 62. Thus, unlike Spangler's capital account, which was never an asset of KSS NY and was not to be paid out of KSS NY's assets, requiring Kershaw to sell KSS NY's property to pay the value of its intangible assets would have been beyond the limit of the arbitrator's jurisdiction. *See id.*

To support her argument, Kershaw cites to *Mo. River Servs. v. Omaha Tribe of Neb.*, 267 F.3d 848 (8th Cir. 2001). Reply Mem. in Supp. of Appl. to Vacate 11. In that case, the arbitrator

ordered damages paid out of a casino's Iowa operations notwithstanding a contractual provision in the parties' agreement that provided an award could only be satisfied out of the casino's Nebraska operations. *Mo. River Servs*., 267 F.3d at 855. The Eighth Circuit held the arbitrator exceeded her authority, because her decision was expressly contrary to the terms of the agreement. *Id.* Kershaw argues that in this case, the Final Award was similarly contrary to the express terms of the bankruptcy court's order to not pay any KSS assets. Reply Mem. in Supp. of Appl. to Vacate 11. However, the arbitrator did not require that Kershaw pay the value of the capital account from KSS assets. To the contrary, the arbitrator held the award did not constitute liability against KSS NY. Final Award ¶ 49. The fact that the arbitrator quantified damages based on the capital account's value does not mean that he awarded KSS NY assets paid to Spangler. This is especially true, because the capital account was an asset on the books of KSS Missouri, not KSS NY. *Id.* Therefore, not only did the arbitrator award the value of Spangler's capital account against Kershaw personally, but the underlying asset that led to the valuation was never an asset of KSS NY.

In sum, because Kershaw could have fully complied with the arbitrator's order without distributing any assets of KSS NY, the arbitrator did not determine an avoidance action in excess of the authority given to him by the Lift Stay Order. Moreover, even if there were some doubt as to whether the arbitrator had the authority under the Lift Stay Order to require Kershaw to pay Spangler the value of Spangler's capital account, "all doubts concerning whether a matter is within the arbitrator's powers [are] resolved in favor of arbitrability." *Hollern v. Wachovia Secs., Inc.*, 458 F.3d 1169, 1173 (10th Cir. 2006).

II. The Arbitrator Did Not Act in Manifest Disregard of Missouri Law.

Next, Kershaw argues the arbitrator acted in manifest disregard of Missouri law and

exceeded his authority, because he "omitted from his recitation of the statute a key clause that profoundly affects the proper application of the law he sought to apply." Mem. of Law in Supp. of Appl. to Vacate 6; Reply Mem. in Supp. of Appl. to Vacate 14–16. Section 347.103.2 together with Section 347.109 of the Missouri Revised Statutes provide that a member withdrawing from an LLC is to receive his interest as of the date of his withdrawal unless doing so would cause the LLC to not be able to pay its debts when they come due or would cause the LLC's total assets to be less than its total liabilities. Kershaw argues the arbitrator relied on Section 347.103.2 to hold that Spangler should receive her interest upon withdrawal, but ignored Section 347.109, which provides Section 347.103.2 does not apply when the LLC cannot pay its debts as they come due. *Id.* at 6–7. According to Kershaw, "[t]his is the very definition of 'manifest disregard' of the law," because "the arbitrator excised from his quotation of the statute . . . this significant limitation." Reply Mem. in Supp. of Appl. to Vacate 15.

The Court disagrees with Kershaw and holds that the arbitrator did not manifestly disregard Missouri law. First, Kershaw has presented no evidence that the arbitrator's omission of the limitation in 347.109 was "willful." *Abbott v. Law Office of Patrick J. Mulligan*, 440 F. App'x 612, 620 (10th Cir. 2011) (stating that manifest disregard of the law requires a party to establish the arbitrator's willful inattentiveness to the law). In *Abbott*, the petitioner cited numerous cases establishing that calculation of damages under Utah law is based on net, rather than gross, profits. 440 F. App'x 612, 620 (10th Cir. 2011). Even though the respondent did not contest these cases, the arbitration panel based damages on gross profits. *Id.* The Tenth Circuit agreed with the district court's holding that this did not constitute manifest disregard for the law, because "[w]hile the arbitration panel may have 'got the law wrong,' and perhaps even '*really* wrong,' there is no

evidence that it engaged in any type of egregious or intentional misconduct as is required under the FAA." *Id.* at 622 (internal quotations omitted). Similarly, the arbitrator's omission of a statutory section, without more, does not demonstrate intentional and willful disregard of the law.

However, even if the arbitrator's omission of Section 347.109 established willful inattentiveness to the law, it would not be sufficient to overturn the Final Award, because the arbitrator did not rest his decision on this finding. Sections 347.103.2 and 347.109 apply only if "the business of a limited liability company is continued following an event of withdrawal of a member . . . ." Mo. Rev. Stat. § 347.103.2. The arbitrator specifically found KSS Missouri did not continue after Spangler withdrew, Final Award ¶¶ 31, 39, and Kershaw concedes this determination is correct. Reply Mem. in Supp. of Appl. to Vacate 6 ("Petitioner's application does not dispute the arbitrator's interpretation of the Operating Agreement, his interpretation of law, or his factual findings."). Therefore, instead of relying on Sections 347.103.2 and 347.109, the arbitrator primarily based his holding on Section 347.137, which requires a dissolved LLC to windup its affairs and distribute its remaining assets. Final Award ¶ 40. The arbitrator discussed Sections 347.103.2 and 347.109 only in an alternative finding, where he stated that "even if Kershaw's unilateral actions had not had the effect of terminating KSS Missouri's existence, the effect of Spangler's withdrawal would have occasioned similar payout consequences with respect to Spangler." *Id.* at ¶ 41. Therefore, even if the arbitrator's omission of Section 347.109 exhibited manifest disregard for Missouri law, this action did not affect the outcome of Kershaw's case, and is thus, insufficient to overturn the arbitrator's decision.

III. The Arbitrator Did Not Exceed His Authority Under the Operating Agreement or the Jackson County Circuit Court's Order.

Lastly, Kershaw contends the arbitrator exceeded the authority the parties' Operating

Agreement and the Jackson County Circuit Court's Order granted him by deciding a claim regarding member compensation. Mem. of Law in Supp. of Appl. to Vacate 8–19. According to Kershaw, because Spangler's capital account "includes compensation, accounts receivables and unbilled work in progress," the arbitrator could not award the capital account without deciding a compensation claim. *Id.* at 9. Spangler contends that "[a]rbitrator Haglund examined the Operating Agreement in some detail to sort out the difference between 'compensation' and 'return of capital,'" and determined that the value of Spangler's capital account was not compensation, which is a finding this court cannot reject. Mem. of Law in Supp. of Appl. to Confirm 17.

The Court agrees with Spangler and holds that Kershaw's argument is without merit. "Because the parties 'bargained for the arbitrator's construction of their agreement,' an arbitral decision 'even arguably construing or applying the contract' must stand, regardless of a court's view of its (de)merits. . . . So the sole question for [this Court] is whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong." *Oxford Health Plans, LLC v. Sutter*, 133 S. Ct. 2064, 2068 (2013) (quoting *E. Associated Coal Corp. v. Mine Workers*, 531 U.S. 57, 62 (2000)). Because Kershaw's argument challenges the arbitrator's interpretation of "compensation," it does not provided grounds to vacate the Final Award.

The arbitrator analyzed the terms of the Operating Agreement and held that assets included in an individual's capital account were not compensation:

> [T]he terms of the Operating Agreement which specifically govern the issue of 'compensation' are found in Schedule A to that Agreement . . . Spangler and Kershaw set forth a number of detailed percentage formulas, by which the Members would allocate revenue between themselves, depending on who generated the client which paid the revenue, and which Member performed the work for which the revenue was paid. The Members reserved this allocation process to themselves in accordance with the devised formulas, apparently so there would no arbitrable dispute about how to allocate revenue. *Once that revenue was consensually*

allocated, however, it became, not compensation, but a capital account credit.

Final Award ¶ 47 (emphasis added). Therefore, the arbitrator interpreted "compensation" to include revenue or work in progress that had not been allocated to a member's capital account. Based on this interpretation, the arbitrator exercised jurisdiction to determine whether Spangler was entitled to the value of her capital account, *see id.* at ¶ 49, and refused to exercise jurisdiction over "Spangler's entitlement, if any, to compensation for her services or her share of Kershaw services rendered to any KSS clients during the month of June 2014; or to compensation for any accounts receivable or unbilled work in process, or other such items existing as of date of her withdrawal . . . ." *Id.* at ¶ 69D. Because, the arbitrator construed the contract to determine the meaning of "compensation," this interpretation must stand, regardless of this Court's view on the merits of the interpretation. Similar to *Oxford Health Plans, LLC*, 133 S. Ct. at 2069, where the Supreme Court held that an arbitrator's determination that an agreement allowed for class action arbitration was insulated from review, the arbitrator's interpretation of Spangler's and Kershaw's Operating Agreement is insulated from review.

Although Kershaw contends she is "not asking this court to reconsider the merits of the Final Award . . . [n]or claiming that the arbitrator misread the Operating Agreement," Reply Mem. in Supp. of Appl. to Vacate 6, her argument for vacatur on these grounds demonstrates the contrary. According to Plaintiff, the arbitrator determined "compensation," because Spangler admitted her capital account included funds that were either received by KSS Missouri and not paid to Spangler, or invoiced by KSS Missouri and not paid to the client. *Id.* at 14. However, according to the arbitrator's interpretation of "compensation," even if the funds had been invoiced but not received by KSS Missouri, they were no longer compensation, because they had been consensually allocated

into Spangler's capital account. Therefore, Kershaw seeks to redefine the arbitrator's interpretation of "compensation" to mean any money not yet distributed to Spangler, regardless of whether the funds were already allocated to her. Because the Court is bound by an arbitrator's interpretation, regardless of its reasonableness, the Court cannot rely on Kershaw's argument to vacate the award.

Additionally, the Jackson County Circuit Court's order referring this case to arbitration specifically found that the "count involves the distribution of capital accounts upon dissolution, and is therefore not excluded from arbitration as a controversy 'regarding the compensation of Members." ECF No. 1-3. Therefore, the very order that Kershaw claims was violated actually supports the arbitrator's interpretation of compensation. Moreover, even if the arbitrator's power to assess damages in the amount of Spangler's capital account was not entirely clear, "[a]n arbitrator's view of the scope of the issue committed to his care is entitled to the same far reaching respect and deference as is normally accorded to the arbitrator's interpretation of the agreement itself." *Advanced Tech. Assocs., Inc. v. Seligman*, 39 F. Supp. 2d 1311, 1316 (D. Kan. 1999) (internal quotation marks omitted); *see also Hollern v. Wachovia Secs.*, 458 F.3d at 1173 (Stating that there is a "strong presumption requiring all doubts concerning whether a matter is within the arbitrator's powers to be resolved in favor of arbitrability"). Therefore, the Court defers to the arbitrator's interpretation of "compensation" and holds that the arbitrator did not exceed his authority in assessing damages in the amount of Spangler's capital account.

CONCLUSION

In sum, Kershaw has not demonstrated that the arbitrator exceeded his authority or acted in manifest disregard of the law. However, because Spangler has not cited any authority supporting a cost award in an application to confirm, and because courts in this District have generally denied

such requests, the Court declines to exercise its discretion to award Spangler her costs in this case. *See Amicorp, Inc., v. Gen. Steel Domestic Sales, Inc.*, No. 07-cv-01105-LTB-BNB, 2007 WL 2890089, at *6 (D. Colo. Sept. 27, 2007) (confirming the arbitration award, but declining to award costs and fees); *Richardson v. Citigroup, Inc.*, 12-cv-0485-WJM-KMT, 2014 WL 3892967, at *2 (D. Colo. Aug. 8, 2014) (same). Accordingly, the Court **denies** Kershaw's Application to Vacate Arbitration Award [filed June 6, 2016; ECF No. 1] and **grants in part and denies in part** Spangler's Application to Confirm Arbitration Award [filed June 28, 2016; ECF No. 7].

Entered and dated at Denver, Colorado, this 10th day of November, 2016.

BY THE COURT:

Michael E. Hegarty

Michael E. Hegarty
United States Magistrate Judge