MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Alicia Woods and Marlon Woods FKA Marlon Lewis,

Appellants-Defendants,

v.

Trim-A-Seal of Indiana, Inc.,

Appellee-Plaintiff.

February 11, 2022

Court of Appeals Case No. 21A-CC-1699

Appeal from the Lake Superior Court

The Honorable Bruce D. Parent, Judge

Trial Court Cause No. 45D11-2003-CC-1958

Riley, Judge.

[1] Appellants-Defendants,[1] Alicia Woods (Alicia), and Marlon Woods (Marlon) (collectively, the Woods), appeal the trial court's entry of final judgment and award of attorney's fees in favor of Appellee-Plaintiff, Trim-A-Seal of Indiana (Trim-A-Seal), in accordance with an arbitration award.

[2] We affirm.

ISSUE

[3] The Woods present this court with two issues, which we restate as the following single issue: Whether the Woods have established any grounds under the Indiana Uniform Arbitration Act (IUAA) for vacating the arbitration award.

FACTS AND PROCEDURAL HISTORY

[4] Trim-A-Seal is an Indiana corporation in the business of installing replacement residential windows. Trim-A-Seal offers windows made by different manufacturers, one of which is Sunrise Windows (Sunrise). Sunrise manufactures casement windows which crank open, remain attached to the sash, and when fully opened, are perpendicular to the sash, allowing a homeowner to clean the exterior of the window from the interior of the home. Sunrise casement windows open to the exterior of the home; they do not open into the home.

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[1] In its complaint, Trim-A-Seal initially named Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Success Mortgage Partners, Inc. On August 4, 2020, the trial court dismissed MERS as a party. MERS does not participate in this appeal.

[5] The Woods are owners of a home located in the 7600 block of Washington Court in Merrillville, Indiana. During the fall of 2018, Trim-A-Seal representative Bruce McFadden (McFadden) made an in-person sales call to Alicia during which he showed her different styles of replacement windows carried by the company, including those manufactured by Sunrise. McFadden also left Sunrise promotional materials with Alicia. The Woods did not order windows at that time, but Alicia contacted McFadden in the spring of 2019 to further discuss the matter. During their conversations, Alicia was clear that she wanted casement replacement windows so that they would match the other casement windows of her home that were not being replaced. McFadden showed Alicia a sample Sunrise casement window and demonstrated for her how that style of window opened.

[6] On April 23, 2019, Trim-A-Seal and the Woods entered into an agreement (the Agreement) for the purchase of sixteen Sunrise windows which were to be "solid white with N 2100A Latitude Ultra Glass package, exterior aluminum trim in white and operating windows *with a tilt sash*." (Exh. A; Transcript p. 31) (emphasis added). The Agreement further provided that any claims arising between the parties in excess of $5,000 would be submitted to binding arbitration, arbitration would be conducted pursuant to the IUAA, and that the purchaser agreed to pay reasonable attorney's fees incurred by Trim-A-Seal in connection with collection upon the Agreement. The contract price of the windows and installation was $15,288. The Woods made a down-payment of $5,000.

[7] Trim-A-Seal installed the sixteen Sunrise casement windows in June of 2019. During the installation, the Woods executed a change order that added $450 to the total cost of the job. One window was found to be broken upon delivery and was replaced by Sunrise at no cost to the Woods. After Trim-A-Seal had finished installing the sixteen windows, the Woods voiced concern that the windows were not as heat-resistant as promised. Trim-A-Seal owner Howard Weiss (Weiss) went to the Woods' home and demonstrated with a heat lamp that the windows indeed repelled heat away from the home. The Woods also became concerned that the replacement windows had not been adequately insulated. To address this concern, at no cost to the Woods, Trim-A-Seal removed the interior trim it had just installed, confirmed that the windows were property insulated, and installed additional insulation wherever possible. Trim-A-Seal then re-installed the interior trim on each window, as the trim that had been removed was no longer useable. Next, Alicia informed Trim-A-Seal that she did not care for the color of the white exterior trim she had ordered. To address this, Trim-A-Seal replaced the white exterior trim that Alicia had ordered with brown exterior trim, again at no cost to the Woods. Alicia then informed Trim-A-Seal that the windows it had installed were not what she ordered because she had ordered windows that opened into the home, which the casement windows installed by Trim-A-Seal did not. Trim-A-Seal disputed that Alicia had ordered casement windows that opened to the interior.

[8] The Woods did not pay any additional amounts to Trim-A-Seal toward their balance of $10,738. On September 4, 2019, Trim-A-Seal recorded a mechanic's

lien against the Woods' real property. On January 16, 2020, Alicia sent a letter to Trim-A-Seal's counsel disputing the validity of the debt at the base of Trim-A-Seal's mechanic's lien and asserting the arbitration clause in the Agreement. On March 17, 2020, Trim-A-Seal filed a complaint, alleging breach of contract and seeking to foreclose on its mechanic's lien. On June 25, 2020, the Woods filed their answer to the complaint and asserted counterclaims for breach of contract and a violation of the Indiana Deceptive Consumer Sales Act (IDCSA). On September 18, 2020, the trial court granted Trim-A-Seal's unopposed motion to stay the proceedings and to compel arbitration pursuant to the Agreement. On January 29, 2021, Daniel Gioia (Arbitrator) accepted his appointment as arbitrator.

[9] On May 27, 2021, the parties engaged in arbitration. McFadden testified that Alicia had never expressed any concerns about the replacement windows opening in so that she could clean them from the interior of her home. McFadden and Weiss both testified that "tilt" in the window industry refers to a window's ability to open but remain attached to the sash, as distinguished from windows that are stationary or that lift out completely from the sash. According to Weiss, casement windows tilt "from the side." (Tr. p. 35). McFadden and Weiss also testified that casement windows that tilt or open into a structure are not generally installed in residences and that Sunrise's residential casement windows do not open into the interior. Alicia testified that she had ordered casement windows but maintained that McFadden had told her that the windows she ordered would tilt into the interior and that her "days of

cleaning from the outside are over." (Tr. p. 100). Alicia acknowledged that McFadden had physically demonstrated the casement window for her, but that "he didn't tilt on it, so he didn't show me that, that's what I mean." (Tr. p. 98).

[10] On July 7, 2021, the Arbitrator entered his findings of fact and conclusions thereon in relevant part as follows:

> 3. In or around April of 2019, a representative from Trim-A-Seal visited the home of the Woods, to demonstrate and discuss the replacement of certain windows in their home. The agent from Trim-A-Seal met with Alicia and represented the windows to be of a certain quality and to have certain features, specifically energy savings, protection from the elements, and the ability to tilt-in for ease of cleaning. The representative specifically told Alicia "Your days of cleaning outside are over."
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> 11. When McFadden met with Alicia in April of 2019, WOODS WAS ADAMANT THAT SHE WANTED CASEMENT WINDOWS TO REPLACE THE CASEMENT WINDOWS THAT WERE ALREADY IN THE PROPERTY SO THAT THE WINDOWS WOULD MATCH THE PROPERTY'S ARCHITECTURAL DESIGN. In addition to casement windows, Alicia also requested that the bay windows be replaced with bay windows. Alicia never mentioned to McFadden any concerns that she may have had regarding ease of window cleaning or tilting in vs. tilting out when selecting the windows to replace those windows already in the [home].
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> 12. McFadden also physically demonstrated for Alicia how the selected casement windows would open and slide to operate, once the windows were installed. [ ] Alicia never requested tilt-

> in windows until after the contracted-for-windows had been installed.
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> 25. Alicia next complained that the newly installed windows did not tilt inward to the [home] even though the casement windows (the windows she ordered) had previously been shown to her and demonstrated that they did not tilt inward. Additionally, seven (7) of the windows selected by Alicia are fixed and did not open at all.

(Appellant's App. Vol. II, pp. 13-16, 18) (names substituted throughout, capitalization in the original). The Arbitrator concluded that Trim-A-Seal had demonstrated breach of contract by the Woods such that it was entitled to foreclose upon its mechanic's lien to secure the payment of the outstanding balance on the Agreement. The Arbitrator further concluded that the Woods had not demonstrated that Trim-A-Seal had "ever provided any representation from [Trim-A-Seal](contrary to the Agreement) that the windows would tilt in" and, thus, that they had failed to prove their counterclaims or any violation of the IDCSA. (Appellant's App. Vol. II, p. 22). The Arbitrator awarded Trim-A-Seal the balance of the Agreement plus interest as provided for in the Agreement, amounting to a judgment of $15,123.17. The Arbitrator also awarded Trim-A-Seal attorney's fees, as provided in the Agreement and by the Indiana mechanic's lien statute. On July 9, 2021, the trial court accepted the Arbitrator's findings of fact and conclusions thereon and entered final judgment in favor of Trim-A-Seal.

[11] The Woods now appeal. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[12] The Woods challenge the arbitration award that was accepted by the trial court and upon which final judgment was entered. Arbitration awards are governed by the IUAA. *See* Ind. Code § 34-57-2-1 *et seq*. Our review of arbitration awards is "very narrow in scope." *Droscha v. Shepherd*, 931 N.E.2d 882, 887 (Ind. Ct. App. 2010). We do not review the merits of an arbitration award *de novo*. *Bopp v. Brames*, 677 N.E.2d 629, 634 (Ind. Ct. App. 1997). Rather, we will only set aside an arbitration award if one of the grounds specified in the IUAA for vacating an award has been shown. *Droscha*, 931 N.E.2d at 887. Those grounds are:

> (1) the award was procured by corruption or fraud;
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> (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;
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> (3) the arbitrators exceeded their powers and the award can not be corrected without affecting the merits of the decision upon the controversy submitted;
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> (4) the arbitrators refused to postpone the hearing 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 section 6 of this chapter, as to prejudice substantially the rights of a party; or
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> (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under section 3 of this chapter (or IC 34-4-2-3 before its repeal), and the party did not

> participate in the arbitration hearing without raising the objection[.]

I.C. § 34-57-2-13(a). The IUAA further provides that "the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm an award." *Id*. The party seeking to vacate the award under the IUAA bears the burden of proving the basis for setting aside the award. *Droscha*, 931 N.E.2d at 887. In addition, any factual question determined in arbitration cannot be relitigated. *Wright v. City of Gary*, 963 N.E.2d 637, 644 (Ind. Ct. App. 2012), *trans. denied*.

[13] The Woods initially argue that the standard of review applicable to a trial court's entry of Trial Rule 52 findings of fact and conclusions thereon applies here. In their reply, the Woods acknowledge that this standard of review does not apply to arbitration awards made pursuant to the IUAA, but they contend that in order to prevail, rather than establish one of the grounds enumerated in section 34-57-2-13, they may establish one of the grounds listed in section 34-57-2-14, which provides for the modification or correction of an arbitration award in the event that

> (1) there was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
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> (2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

> (3) the award is imperfect in a matter of form, not affecting the merits of the controversy.

In their reply, the Woods suggest "there was an evident mistake in the description of . . . [a] thing . . . referred to in the award" for purposes of section 34-57-2-14(a)(1) because they did not receive the windows that tilt into the interior that they contend were ordered in the Agreement and because the Arbitrator found that the windows at issue slide instead of tilt. (Appellants' Reply p. 6). However, these are challenges to the substance of the Arbitrator's decision. *See School City of East Chicago, Ind. v. East Chicago Fed. of Teachers*, 622 N.E.2d 166, 169 (Ind. 1993) (concluding that the school city's challenge to the substantive merits brought before the arbitrator did not establish a ground for relief under section 34-57-2-14). The Woods do not seek to simply modify or correct the award in some fashion, leaving it otherwise intact. The gravamen of their appeal is that they seek to have the Arbitrator's award vacated. Therefore, we will determine if they have established one of the grounds for vacating an arbitration award set forth in section 34-57-2-13.

II. *The Agreement*

[14] The Woods argue that the Arbitrator misinterpreted what they contend was the Agreement's unambiguous provision for windows with a "tilt sash." (Exh. A). The Woods criticize the Arbitrator's findings and conclusions as being

somewhat contradictory[2] and "replete with misplaced parol evidence" which they argued was unnecessary to construe the unambiguous Agreement, yet they also cite to testimony from the arbitration hearing which they contend supports their interpretation of the Agreement. (Appellants' Br. p. 8). These arguments challenge the Arbitrator's interpretation of the Agreement, a contract between the parties. It is well-settled that the construction of the terms of a written contract is generally a pure question of law. *PointOne Recruiting Sols., Inc. v. Omen USA, Inc.*, 177 N.E.3d 81, 84 (Ind. Ct. App. 2021).

[15] However, the IUAA does not provide for the vacating of an arbitration award due to legal error. *See* I.C. § 34-57-2-13(a) ("the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm an award."); *see also MSP Collaborative Developers v. Fidelity & Deposit Co.*, 596 F.2d 247, 250 (7th Cir. 1979) (applying the IUAA and observing that the "Act does not classify legal error as a ground for vacating the award"). This court has acknowledged that, where, as here, an arbitrator enjoys broad authority to settle disputes between parties, the arbitrator is not bound by principles of substantive law, and an award will not

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[2] We observe that the Arbitrator's finding #3 providing that McFadden represented to Alicia that "the windows" had the "ability to tilt-in for ease of cleaning" and that he specifically told Alicia, "Your days of cleaning outside are over" do not inherently contradict the Arbitrator's other factual findings and conclusions. (Appellants' App. Vol. II, pp. 13-14). Testimony was presented that Alicia was shown a variety of windows and that Sunrise manufactures a double-hung style which did open to the interior, but that Alicia specifically ordered the casement windows after being shown how they open. Weiss testified that Sunrise casement windows may be cleaned from the interior of the home. In any event, even if the Arbitrator's findings and conclusions conflicted, the Woods present no authority for their apparent proposition that the entry of contradictory findings or conclusions by an arbitrator is a ground for relief under section 34-57-2-13.

be reversed because of alleged legal errors. *School City of East Chicago v. East Chicago Fed. of Teachers*, 422 N.E.2d 656, 662 (Ind. Ct. App. 1981). The rational for this "is the view that a part of what the parties have bargained for is dispute resolution based upon the sense of equity or fairness of an impartial umpire who is familiar with their problems and who should not be constrained by legal technicalities." *Id*. Therefore, when reviewing a claim that an arbitrator misinterpreted a contract, rather than strictly applying substantive contract law, we determine whether the chosen construction of the contract "is a reasonably possible one that can seriously be made in the context in which the contract was made." *Marion Cmty. Sch. Corp. v. Marion Teachers Ass'n*, 873 N.E.2d 605, 609 (Ind. Ct. App. 2007) (quotation omitted).

[16] Here, the Arbitrator concluded that the Woods had received the windows specified in the Agreement. This was a reasonable conclusion based on Weiss's and McFadden's testimony regarding the meaning of the word 'tilt' in the window industry, Alicia's insistence on casement windows, and the fact that McFadden demonstrated the casement windows for Alicia prior to the execution of the Agreement. Therefore, we conclude that the Woods have failed to establish one of the grounds for vacating an arbitration award under section 34-57-2-14.

III. *IDCSA*

[17] The Woods also challenge the Arbitrator's conclusion that Trim-A-Seal did not violate the IDCSA, which prohibits a supplier from committing an "unfair, abusive, or deceptive act, omission, or practice in connection with a consumer

transaction." I.C. § 24-5-0.5-3(a). The IDCSA defines a deceptive act as making implicit or explicit misrepresentations that the subject of "a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not." I.C. §§ 24-5-0.5-3(a), (b)(2). The Woods argue that Trim-A-Seal violated the provisions of the IDCSA because it misrepresented the style or model of the casement windows it sold them as being capable of tilting into the interior of the home.

[18] However, the Arbitrator found that the Woods had not established that Trim-A-Seal "ever provided any representation from [Trim-A-Seal] (contrary to the Agreement) that the windows would tilt in[.]" (Appellant's App. Vol. II, p. 22). This was a factual issue determined by the Arbitrator that we are not at liberty to ignore. *See Wright*, 963 N.E.2d at 644 (quoting *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 37-38, 108 S.Ct. 364, 98 L.E.2d 286 (1987) for the proposition that "an arbitrator must find facts and a court may not reject those findings simply because it disagrees with them."). Therefore, even if we were to assume, without deciding, that a violation of the IDCSA was potentially a proper basis for vacating an arbitration award, the Woods' argument must still fail because its factual underpinning is in contradiction to

the Arbitrator's factual finding.[3]

CONCLUSION

[19] Based on the foregoing, we conclude that the Woods have failed to establish any grounds under the IUAA for vacating the arbitration award.

[20] Affirmed.

[21] Robb, J. and Molter, J. concur

[3] Trim-A-Seal states in its brief that "[t]he award of Trim-A-Seal's attorney fees should now extend to those attorney fees involved in this appellate proceeding." (Appellee's Br. p. 18). Apart from this bald assertion, Trim-A-Seal develops no further argument, nor does it cite any legal authority providing that it is entitled to appellate attorney's fees. Therefore, we find the issue to be waived and do not address the matter further. *See* Ind. Appellate Rule 46(A)(8)(a).