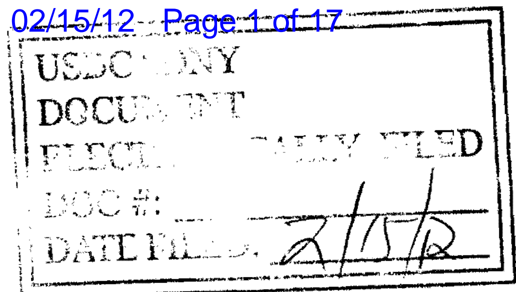

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LJL 33rd STREET ASSOCIATES, LLC,

Petitioner/Cross-Respondent

-v-

PITCAIRN PROPERTIES, INC.,

Respondent/Cross-Petitioner.

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11 Civ. 6399 (JSR)

MEMORANDUM ORDER

JED S. RAKOFF, U.S.D.J.

This is an action brought by petitioner LJL 33rd Street Associates, LLC ("LJL") to confirm in part and vacate in part an arbitration award. Respondent Pitcairn Properties, Inc. ("Pitcairn") opposed and filed a cross-petition seeking to vacate the arbitration award. The parties are members of a limited liability company that owns a luxury high-rise residential building in Manhattan. The Operating Agreement between the parties contained a triggering event that would allow LJL to make an offer to purchase Pitcairn's share of the company. The triggering event happened, and LJL made the offer. Because the parties could not agree on the fair market value of the property, LJL sought arbitration of that question as provided for in the Operating Agreement. The arbitrator made a fair market value determination, but declined to take jurisdiction over the issue of the Buy/Sell Price referenced in a separate provision of the agreement. LJL's petition asserts that the arbitrator erred in declining to address the Buy/Sell Price.

Pitcairn's cross-petition asserts that the arbitrator excluded relevant evidence related to the fair market value of the property and thus that the arbitration proceedings were fundamentally unfair.

After carefully considering the parties' written submissions and oral argument, the Court issued a "bottom-line" Order on December 5, 2011 denying LJL's petition but granting Pitcairn's cross-petition and vacating the arbitration award. This Memorandum explains the reasons for that Order and remands the case to the arbitrator.

The relevant facts are the following. Pitcairn and LJL are the equal members of 35-39 West 33rd Street Associates, LLC (the "Company"). Pitcairn is an owner, developer, and manager of real estate assets, with a principal place of business in Pennsylvania. Memorandum of Law of Respondent Pitcairn Properties, Inc. in Opposition to Petition ("Resp't Mem.") at 2, 6. LJL is a New Jersey Limited Liability Company that holds the interests of Les Lustbader and his children in the Company. Id. at 2. The Company owns the apartment building located at 35-39 West 33rd Street in Manhattan (the "Property"). On June 5, 2001, the parties entered into an Amended and Restated Limited Liability Company Operating Agreement (the "Operating Agreement"), which governs the ownership, development, and management of the Property.

On November 2, 2010, LJL exercised its option to buy Pitcairn's shares.[1] The parties could not agree on the fair market value of the Property, and on December 28, 2010, LJL filed its arbitration demand and statement of claims. The statement of claims asserted three claims for relief: (1) a declaration of the Stated Value; (2) a declaration of the Buy/Sell Purchase Price (the "Buy/Sell Price"); and (3) damages for alleged breaches of the Operating Agreement.[2] Id. at 3.

Pitcairn filed its answering statement and objections on January 13, 2011 and expressly objected to the arbitrator's exercise of jurisdiction over the Buy/Sell Price. Cross-Pet'r Ex. 1. Throughout the course of the arbitration, Pitcairn also asserted that it objected to the arbitrator's exercise of jurisdiction over the Buy/Sell Price, because it contended that the Operating Agreement did not provide for arbitration of the Buy/Sell Price. Resp't Mem. at 4.

On July 21, 2011, the arbitrator issued his award that the fair market value of the Property was $56.5 million.[3] The arbitrator

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[1] The validity of the exercise of that option is the subject of related litigation between the partiess. See Pitcairn Properties, Inc. v. LJL 33rd Street Associates, LLC, 11 Civ. 7318 (JSR) (S.D.N.Y. 2011).

[2] This third claim for relief is not at issue here.

[3] This amount was also the amount recommended by the third-party independent appraiser who was appointed, pursuant to the Operating Agreement, to assist the arbitrator in determining the fair market value of the building.

declined to take jurisdiction over the Buy/Sell Price. In his award, the arbitrator wrote, "the Arbitrator, with the parties' consent, has not exercised jurisdiction over" the Buy/Sell Price. Cross-Pet'r Ex. 14 at 2. LJL filed a motion with the arbitrator seeking to modify the Award; in its motion, LJL specifically argued that it did not consent to the arbitrator's jurisdiction over the Buy/Sell Price. Cross-Pet'r Ex 16. The arbitrator denied LJL's motion. Pet'r Ex B.

Respondent's cross-petition centers on four pieces of evidence that the arbitrator did not allow into evidence (the "Excluded Evidence"). The arbitrator stated that the exhibits would "not be admitted into evidence" and that the Excluded Evidence could "not be considered by the Arbitrator or the neutral appraisal expert . . . in connection with a determination of the subject property's relevant valuation." Cross-Pet'r Ex 13 at 2. The arbitrator did not explain his reasons for excluding the evidence. The four pieces of evidence are as follows:

First, a letter of intent dated January 6, 2011 from Equity Residential ("Equity") making an offer to buy the Property. Memorandum of Law of Cross-Petitioner Pitcairn Properties, Inc. in Support of Its Cross-Petition to Vacate Arbitration Award ("Cross-Pet'r Mem") at 4. Equity is the largest publicly-traded owner of multi-family properties in the United States. Id.[4] Equity initially

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[4] During the arbitration, LJL's expert appraiser, Robert Von Ancken, agreed that Equity "is a significant owner of properties in the

told Pitcairn that it valued the Property at approximately $80 million based on publically available information and requested access to the property's financial information to determine a more precise price. Cross-Pet'r Ex. 10 at PPI000002. Pitcairn gave financial information about the property to Equity, and Equity then sent the letter of intent, which proposed that Equity purchase the Property for $68 million. Id. at PPI000068. Pitcairn counter-signed the letter of intent, id. at R-8, and sought LJL's consent to sell the property to Equity. LJL did not give its consent and thus the sale did not go forward. Cross-Pet'r Mem. at 5.

Second, a report from Eastdil, a real estate banking firm entitled "asset summary"; this report stated that the Property was worth between $63 million and $71.9 million, with a mid-point of $67.2 million. Cross-Pet'r Ex. 10 at PPI000644.[5]

Third, a valuation of the property from CBRE Capital Advisors ("CBRE"). On July 22, 2010, CBRE made a presentation to Pitcairn's Board of Directors. The "Discussion Materials" that CBRE distributed in conjunction with that presentation gave CBRE's assessment of the Property's value as between $63,194,800 and

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relevant market." See Cross-Pet'r Ex. 4 at 203-04.Mr. Von Ancken further testified that Equity is a credible buyer for the Property and that Equity has "a lot of money" and is "smart." Id.

[5] Pitcairn provided Eastdil with the same financial information made available to the parties, their appraisers, and Equity, so that Eastdil could prepare a broker's opinion of value for the property. Pitcairn did not pay Eastdil to produce the report. Cross-Pet'r Mem. at 6.

$71,541,600.12. Id. at PPI000719.

Fourth, a letter from Eric Blum, the managing member of Pitcairn's sole preferred shareholder. Cross-Pet'r Mem. at 7. Blum wrote the letter, which discussed the value of Pitcairn's assets including the Property, while the preferred shareholder was in a dispute with Pitcairn. The dispute stemmed in large part from the preferred shareholder's belief that Pitcairn was underperforming financially and that Pitcairn was overvaluing its assets. Id. at PPI000747-48.[6] The letter reported that William Porter, an accountant who was advising the preferred shareholder, had performed an analysis of Pitcairn's assets. Relying on Mr. Porter's analysis, the letter stated that the preferred shareholder valued the Property "in the low $60 millions." Cross-Pet'r Ex. 10 at PPI000748.

LJL's expert estimated that the Property was worth $51 million, with a debt of $48 million. Id. at 8. Pitcairn's expert valued the property at $66 million. Id. The expert testified that he reviewed the four disputed materials prior to issuing his report to determine if his independent analysis of the building's value was consistent with the evaluations conducted by other entities. See Cross-Pet'r Ex. 7 (5/23/11 Tr.) at 598-99.

As a preliminary matter, the parties dispute whether the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("FAA"), governs the

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[6] Pitcairn argues that "[d]ue to the nature of the dispute between Pitcairn Holdings and [its preferred shareholder], Mr. Blum and Mr. Porter had, if anything, a strategic interest in understating the value of Pitcairn's assets, including the Property." Cross-Pet'r Mem. at 7-8.

Operating Agreement. The FAA governs the Operating Agreement if: "(1) the parties have entered into a written arbitration agreement; (2) there exists an independent basis for federal jurisdiction; and (3) the underlying transaction involves interstate commerce." In re Arbitration Between Chung & President Enters. Corp., 943 F.2d 225, 229 (2d Cir. 1991).

Here, it is clear that the first and second prongs of this test have been met: the parties entered into a written arbitration agreement and diversity jurisdiction provides an independent basis for federal jurisdiction. Therefore, the critical question is whether the transaction "involves interstate commerce." The Supreme Court has held that "'involving commerce' in the FAA [is] the functional equivalent of the more familiar term 'affecting commerce' - words of art that ordinarily signal the broadest permissible exercise of Congress' Commerce Clause power." Citizens Bank v. Alafabco, Inc., 539 U.S. 52, 56 (2003).

The transaction affects interstate commerce because Pitcairn and LJL are from Pennsylvania and New Jersey, respectively, and together they developed the Property in New York and now manage and own the Property in that state.[7] Because of the broad reading

[7] LJL argues that this is a residential real estate transaction with no connection to interstate commerce. It points to cases that decline to apply the FAA to individual residential real estate contracts. See, e.g., Garrison v. Palmas Del Mar Homeowners Ass'n, Inc., 538 F. Supp. 2d 468 (D.P.R. 2008). But, the instant transaction is not the sale of residential real estate, but rather the ongoing development and management of a large-scale real estate project by out-of-state entities. Even LJL's strongest case

afforded to the term affecting interstate commerce, the Court concludes that the Federal Arbitration Act governs the instant transaction.

Having determined the proper governing statute, the next question is whether the arbitrator was required to arbitrate the Buy/Sell Price. LJL argues that the arbitrator failure to do so constituted an imperfect execution of the arbitrator's power. Therefore, LJL requests that the Court remand the case to the arbitrator to determine the Buy/Sell Price of the Property.

The Court disagrees and finds that the arbitrator correctly declined to exercise jurisdiction over the Buy/Sell Price. The Operating Agreement governed which issues were subject to arbitration, and "a party can be forced to arbitrate only those issues it specifically has agreed to submit to arbitration." First Options, Inc. v. Kaplan, 514 U.S. 938, 945 (1995). The scope of an arbitrator's authority "generally depends on the intention of the parties to an arbitration, and is determined by the agreement or submission. Such an agreement or submission serves not only to define, but to circumscribe, the authority of arbitrators." Ottley v. Schwartzberg, 819 F.2d 373, 376 (2d Cir. 1987). According to the clear terms of the Operating Agreement, the parties did not agree to arbitrate the Buy/Sell Price of the Property.

Section 11.19, the arbitration clause, stated that

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acknowledges that courts have applied the FAA to large-scale real estate transactions involving out-of-state entities. See id. at 474.

arbitration would apply to "[a]ny provision of this Agreement which *specifically provides* that a dispute will be resolved by the Expedited Arbitration" described in Section 11.1." Id. § 11.19 (emphasis added). Under a narrow arbitration clause such as this one,[8] the court must ask "whether the conduct in issue is on its face within the purview of the clause." Rochdale Vill., Inc. v. Pub. Serv. Emp. Union, 605 F.2d 1290, 1295 (2d Cir. 1979).

Section 8.8 of the Operating Agreement gave LJL the option to buy Pitcairn's interest in the Company if there came a time when Pitcairn's CEO, Salah Mekkawy, was no longer employed by Pitcairn. That section stated that if this triggering event occurred, LJL would "have the right to purchase Pitcairn's Interest (in whole but not in part), pursuant to the terms, conditions and procedures set forth in Section 6.12(c) of this Agreement." Operating Agreement § 8.8. That section also stated that if Pitcairn and LJL were unable to agree upon the fair market value of the Property,[9] either party could choose to have "such dispute" determined by Expedited Arbitration pursuant to the arbitration clause of Section 11.19.

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[8] A narrow arbitration clause specifies which issues or types of disputes will be arbitrated. McDonnell Douglas Fin. Corp. v. Pa. Power & Light Co., 858 F.2d 825, 832 (2d Cir. 1988). By contrast, a broad arbitration clause requires arbitration of "disputes of any nature or character," or "any and all disputes." Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading Inc., 252 F.3d 218, 225 (2d Cir. 2001).

[9] The Stated Value was defined as "the fair market value of the Property without deduction for any Company liabilities." Operating Agreement § 6.12(a).

Id. A separate provision of the Operating Agreement, section 6.12, governed the procedure for calculating the Buy/Sell Price and did not mention arbitration.[10] Therefore, the narrow arbitration clause here did not provide for arbitration of the Buy/Sell Price, and the arbitrator correctly declined jurisdiction over that issue.[11]

Pitcairn repeatedly objected to the arbitrator's exercise of jurisdiction over the Buy/Sell Price before the arbitration commenced and during the arbitration. This was enough to indicate its disagreement with the arbitrator's exercise of jurisdiction over that issue. See, e.g., Opals on Ice Lingerie v. Bodylines Inc., 320 F.3d 362, 368 (2d Cir. 2003). LJL contends that Pitcairn consented to having the Buy/Sell Price decided at a later point in the proceeding. As proof of this purported agreement, LJL points to the following statement from Pitcairn's attorney during the arbitration:

> "Those issues [relating to Buy/Sell Price] may - *when and if we get to a closing someday on this transaction need to be addressed,* but that is not the purpose of this hearing. And, again, just to clarify - I think we're in agreement on this Mr. Steingut, but this hearing is limited to coming up with the fair market value number for the property. It is not to - intended to proceed to the next step of either, A, are we - is Pitcairn required to sell its interest or, B, if it is at what actual amount when you actually take out the liabilites [sic] and escrows and accruals and all that kind of good stuff.

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[10] The price would be calculated by determining the price that would "produce for Selling Member the same cash consideration as Selling Member would have received if the assets of the Company had been sold on the Buy/Sell Transfer Date to a third party in an all-cash sale for a purchase price equal to the Stated Value." Id. § 6.12.

[11] The Court also rejects LJL's request that the Court take ancillary jurisdiction over the determination of the Buy/Sell Price.

> *We've also reserved that for a later day.* Correct, Mr. Steingut [LJL's attorney].

Petition at 10 (emphases added).

This statement is far from the smoking gun that LJL claims it to be. In fact, when read in context, it undermines LJL's claim that Pitcairn agreed to have the Buy/Sell Price decided later in the arbitration proceeding. Pitcairn first said that the Buy/Sell Price would need to be addressed when and if the parties got to closing. A few seconds later, when Pitcairn's attorney said Pitcairn was reserving the Buy/Sell Price for a *later day*, he did not say a later day in the arbitration proceeding, and he had earlier made clear that the later day was around the time of a closing on the property. But, before closing could happen, Pitcairn made clear that it was also going to challenge the validity of the exercise of the option, which had not been a subject of the arbitration.

LJL also argues that Pitcairn proceeded to arbitration without moving for a stay of arbitration, and that Pitcairn thereby waived any argument that the arbitrator should not arbitrate the Buy/Sell Price. Even assuming arguendo that the twenty-day time limit for seeking a stay in NY CPLR §7503(c) did apply in this FAA case,[12] Pitcairn did not waive its right to object to jurisdiction over the buy/sell provision. Pitcairn's decision not to seek a stay of

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[12] The law of this Circuit is not settled as to whether the time limit set forth in CPLR §7503(c) applies in cases governed by the FAA. See Irving R. Boody & Co., Inc. v. Win Holdings Intern., Inc., 213 F. Supp. 2d 378 (S.D.N.Y. 2002) (collecting cases).

arbitration based on a jurisdictional objection does not waive that objection where, as here, the objecting party is subject to the arbitrator's jurisdiction on at least some issues. See Amedeo Hotels Ltd. P'ship v. N.Y. Hotel & Motel Trades Council, AFL-CIO, 10 Civ. 6150, 2011 WL 2016002, *6 (S.D.N.Y. May 18, 2011).

It is true, however, that the arbitrator incorrectly stated that he had the parties' consent not to address the Buy/Sell Price. It is clear that the arbitrator did not have LJL's consent for this decision. However, the Court need not decide whether the arbitrator's statement was error or merely inartful phrasing, because any error here was harmless. As discussed above, the Buy/Sell Price was not properly the subject of arbitration. *LJL's* consent was irrelevant to that issue, because the Operating Agreement simply did not provide for arbitration over the Buy/Sell Price. Therefore, the arbitrator properly declined to exercise jurisdiction over the Buy/Sell Price of the Property, and Pitcairn did not waive any objections to the exercise of that jurisdiction.

The Court now turns to Pitcairn's cross-petition. As Pitcairn concedes, arbitration awards are entitled to great deference by a reviewing court. See Hill v. Staten Island Zoological Soc'y, Inc., 147 F.3d 209, 212 (2d Cir. 1998). This is so "because an overly expansive judicial review of arbitration awards would undermine the litigation efficiencies which arbitration seeks to achieve." Fine v. Bear, Stearns & Co., 765 F. Supp. 824, 827 (S.D.N.Y. 1991) (quoting Transit Cas. Co. v. Trenwick Reinsurance Co., 659 F. Supp.

1346, 1350-51 (S.D.N.Y. 1987)).

The FAA provides that a court may vacate an arbitration award, however, "where the arbitrators were guilty of misconduct . . . in refusing to hear evidence pertinent and material to the controversy." 9 U.S.C. § 10(a)(3). This provision of the FAA "has been narrowly construed so as 'not to impinge on the broad discretion afforded to arbitrators to decide what evidence should be presented' during the course of the arbitration proceedings." GFI Secs. LLC v. Labandeira, No. 01 Civ. 00793, 2002 WL 460059, at *6 (S.D.N.Y. Mar. 26, 2002) (quoting Ripa v. Cathy Parker Mgmt., Inc., No. 98 Civ. 0577, 1998 WL 241621, at *3 (S.D.N.Y. May 13, 1998)). Ultimately, as this Court has previously ruled, "[i]n order to obtain relief under Section 10(a)(3), a party must demonstrate that the error complained of 'was made in bad faith or was so gross as to amount to affirmative misconduct.'" Global Intern. Reinsurance Co., v. TIG Ins. Co., No. 08 Civ. 7338, 2009 WL 161086, *3 (S.D.N.Y. Jan. 21, 2009) (quoting Local 530 v. Dist. Council No. 9, No. 99 Civ. 2703, 1999 WL 1006226, at *2 (S.D.N.Y. Nov. 5, 1999)).

Pitcairn argues that the arbitrator committed affirmative misconduct because he denied Pitcairn a "meaningful opportunity to present pertinent and material evidence demonstrating both the reasonableness of Pitcairn's expert's opinion and the unreasonableness of LJL's expert's opinion." Cross-Pet'r Mem. at 11. The Court agrees. "Although not required to hear all the evidence proffered by a party, an arbitrator 'must give each of the

parties to the dispute an adequate opportunity to present its evidence and argument.'" Tempo Shain Corp. v. Bertek, Inc., 120 F.3d 16, 20 (2d Cir. 1997) (quoting Hoteles Condado Beach v. Union De Tronquistas Local 901, 763 F.2d 34, 39 (1st Cir. 1985)). In determining fair market value, evidence of genuine market activity is certainly pertinent and material.[13] In particular, the offer of intent from Equity was a critical piece of concrete evidence as to how the market valued the Property. See First Nat'l Bank of Kenosha v. United States, 763 F.2d 891 (7th Cir. 1985) (considering an unenforced option contract when evaluating the fair market value of a property); see also Manhattan Church of Christ, Inc. v. 40 East 80 Apartment Corp., 866 N.Y.S.2d 53, 55 (N.Y. App. Div. 2008) (defining fair market value as the "price for which the property would sell if there was a willing buyer who was under no compulsion to buy and a willing seller under no compulsion to sell.") Moreover, the Equity letter of intent was not the only piece of evidence that the arbitrator excluded; rather, the arbitrator excluded essentially all of the factual evidence about genuine market activity and valuation even though this evidence was critical to a determination of fair

[13] LJL argues that this case is analogous to this Court's decision in Duferco, S.A. v. Tube City IMS, LLC, No. 10 Civ. 7377, 2011 WL 666365 (S.D.N.Y. Feb. 4, 2011). Such reliance is misplaced because in Duferco, the arbitrator bifurcated the proceeding and excluded evidence that was, without more, irrelevant to the first stage of the proceeding. Here, as discussed above, the evidence was both relevant and material.

market value.[14]

Although it is clear that the Excluded Evidence was material and pertinent, that is not the end of the Court's inquiry, because "every failure of an arbitrator to receive relevant evidence does not constitute misconduct requiring vacatur of an arbitrator's award." Hoteles Condado, 763 F.3d at 40. In fact, according to the statute, vacatur is only appropriate "if the arbitrator's refusal to hear pertinent and material evidence prejudices the rights of the parties to the arbitration proceedings." Id. (citing 9 U.S.C. § 10(c)). Here, however, the exclusion of the evidence was highly prejudicial because it prevented Pitcairn from effectively demonstrating that four experts -- Equity, Eastdil, CBRE, and William Porter -- all agreed that the Property was worth between $62 million and $71.9 million. Pitcairn's expert's valuation of $66 million was consistent with all of those analyses, and with the bona fide offer of $68 million, but LJL's expert valued the Property at only $51 million. When viewed in light of all of the relevant and pertinent evidence, LJL's expert was an outlier, and thus Pitcairn was highly prejudiced by the exclusion of the Excluded Evidence.

LJL made several evidentiary objections, such as hearsay, to the Excluded Evidence and thus argues that the arbitrator properly

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[14] Arbitrators are not required to state the reason for their rulings, DiRussa v. Dean Witter Reynolds Inc., 121 F.3d 818, 822 (2d Cir. 1997), although their failure to state their reasons on evidentiary matters such as this one does add unnecessary difficulty to a review of that decision.

excluded the evidence on those grounds. In arbitration proceedings, however, there is no need to comply with strict evidentiary rules. After noting that arbitrators are allowed to accept hearsay evidence, the Second Circuit in Petroleum Separating Co. v. Interamerican Ref. Corp., 296 F.2d 124 (2d Cir. 1961) stated the following: "[i]f parties wish to rely on such technical [hearsay] objections they should not include arbitration clauses in their contracts. The appeal is quite insubstantial." Id. at 124. Compliance with strict evidentiary rules is especially not required here because the arbitration was conducted under the AAA's Expedited Arbitration procedures.[15] Operation Agreement § 11.19. Those procedures incorporate the AAA Rules and Mediation Procedures ("AAA Rules"), which state that "conformity to legal rules of evidence shall not be necessary." AAA R. 31.[16] Instead, those rules provide that "the parties may offer such evidence as is relevant and material to the dispute" and that "the arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant." Id. Therefore, the evidentiary issues raised by LJL should have gone to the weight afforded to the Excluded Evidence rather than its admissibility.

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[15] The Operating Agreement provided for a hearing at which each side "shall be entitled to present evidence and witnesses to support its position." Operating Agreement § 11.19(b)(iv).

[16] Pitcairn repeatedly advised the arbitrator of the applicability of AAA Rule 31. See Cross-Pet'r Exs. 17; 18.

The "touchstone" for a finding of arbitral misconduct under the FAA is the concept of "fundamental fairness." See, e.g., The Home Indem. Co. v. Affiliated Food, No. 96 Civ. 9707, 1997 WL 773712, at *3 (S.D.N.Y Dec. 12, 1997). The arbitrator's refusal to hear this evidence constituted affirmative misconduct and rendered the proceedings fundamentally unfair. See Tempo Shain, 120 F.3d at 20. The Court recognizes that arbitrators are to be given great leeway, and it also recognizes the inefficiencies associated with expansive judicial review of arbitration. On the other hand, some judicial review is critical in order to ensure the fundamental fairness of the proceedings. While courts are not in the business of reviewing every evidentiary decision that arbitrators make, here, the arbitrator excluded every piece of factual evidence that Pitcairn proffered regarding genuine market activity and valuations of the Property - evidence that might well have changed the outcome of the arbitration. In light of the particular facts of this case, the Court must vacate the arbitration award.

For the foregoing reasons, the Court, by Order dated December 5, 2011, denied LJL's petition, and granted Pitcairn's cross-petition. The Clerk of the Court is now directed to enter judgment vacating the arbitration award and remanding the matter to the arbitrator for further proceedings consistent with this opinion.

SO ORDERED.

Dated: New York, NY
February 14, 2012

JED S. RAKOFF, U.S.D.J.