COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

APEX ENERGY GROUP, LLC,	:	
Plaintiff-Appellee,	:	No. 115629
v.	:	
COHEN & COMPANY, LTD., ET AL.,	:	
Defendants-Appellants.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 17, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-22-964607

Appearances:

Santen & Hughes, Nicholas E. Shaffer, and Charles E. Reynolds, *for appellee.*

Benesch, Friedlander, Coplan & Aronoff LLP, Michael D. Meuti, David M. Hopkins , and Michael B. Silverstein, *for appellants*, Great Day Improvements, LLC.

MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant Great Day Improvements, LLC ("Great Day") appeals the trial court's judgment confirming the arbitration award in favor of plaintiff-appellee Apex Energy Group, LLC ("Apex"). Great Day raises the following assignments of error for review:

> **Assignment of Error I:** The trial court erred in confirming the arbitration award rendered in [Apex's] favor [ ] concerning a dispute over amounts due and owing under an Asset Purchase Agreement (the "APA") between [Great Day] and [Apex].
>
> **Assignment of Error II:** The trial court erred in denying [Great Day's] motion to vacate or, in the alternative, to modify the award to remedy significant and basic mathematical and accounting errors.

{¶ 2} For the reasons set forth below, we affirm.

I. Facts and Procedural History

{¶ 3} This appeal arises from the trial court's confirmation of the arbitrator's award resolving a post-closing accounting dispute between Great Day and Apex. Apex, which was a replacement window sales company, sold substantially all of its assets to Great Day in November 2020. According to the parties' APA, Apex was entitled to post-closing payments based on the Earnings Before Interest, Taxes, Depreciation and Amortization ("EBITDA") of the purchased assets in 2021. Under the APA, Great Day was required to provide Apex with its calculation (the "2021 Earnout Statement") of EBITDA with "reasonable supporting detail" and provide Apex with reasonable access to its "books and records relevant to the 2021 Earnout Statement and the calculations set forth therein." (APA Section 3.4(a).)

{¶ 4} If the parties disagreed on the calculations, they agreed "to refer such disputes to Cohen & Company or if Cohen & Company [('Cohen')] declines to act as such a nationally recognized independent accounting firm (such firm, which shall be reasonably acceptable to both the [Apex's] Representative and [Great Day], being referred to herein as the 'Designated Accounting Firm')[.]" (APA Section 3.3(b)(iii).) Furthermore, the "Designated Accounting Firm's determination will be based solely on such written submissions and not on the basis of independent review"; "the Designated Accounting Firm will determine only those issues set forth in the Dispute Notice that remain unresolved"; and "the calculations determined by the Designated Accounting Firm shall be final and binding on [Great Day] and [Apex's] Representative for all purposes of this Agreement, absent manifest calculation error." (APA Section 3.3(b)(iii).) These dispute resolution procedures are "the sole and exclusive method for resolving any such disputes." (APA Section 3.3(d).)

{¶ 5} According to Apex, on numerous occasions it requested general and specific financial and operational information from Great Day, who refused to provide meaningful responses to Apex's requests. Apex believed it was impossible for Cohen to act as a neutral arbitrator in this matter and asked that Cohen recuse itself from that role because Great Day's chief financial officer, who was responsible for the calculation challenged, was a former employee of Cohen who was hired by Great Day after it purchased assets from Apex.

{¶ 6} Ultimately, Apex filed suit against Cohen and Great Day in June 2022, alleging four causes of action. Apex sought a declaratory judgment that Great Day breached the APA by failing to provide Apex with access to its books and records relevant to the 2021 Earnout Statement and the calculations (Counts I and II) and that Cohen is not qualified to act as the arbitrator in this case (Count IV). Apex also sought attorney fees (Count III) on the basis that trial courts have the "authority to award attorneys' fees in contract cases involving bad faith on the part of one of the parties to a contract." (Apex Complaint, June 10, 2022.) In July 2022, Apex voluntarily dismissed its complaint against Cohen without prejudice.

{¶ 7} In August 2022, Great Day filed its answer and a motion to compel arbitration and to stay the proceedings pending arbitration. Great Day argued that under the APA, if the parties disagreed about the calculations, the sole and exclusive remedy was "to refer such disputes to . . . a nationally recognized independent accounting firm." (APA, Section 3.3(b)(iii).) Great Day contended that the parties "are currently in the process of securing an accounting firm to resolve this dispute." (Motion to Compel, p. 2.) Apex opposed, arguing that "the arbitration provision at issue is by its terms limited to 'calculations' and does not compel arbitration of other issues raised in [its] Complaint." (Apex's Brief in Opposition, p. 7.)

{¶ 8} In November 2022, Apex sought to amend its complaint. The court granted Apex leave, and Apex filed its amended complaint on November 28, 2022. The court also granted Great Day's motion to compel arbitration and ordered the parties to file a notice indicating whether they have agreed on an arbitrator. On December 22, 2022, Apex filed a joint notice that the parties have agreed on an arbitrator, later identified as Crowe LLP ("Crowe"), to resolve the dispute.

{¶ 9} In its amended complaint, Apex sought a declaratory judgment that Great Day breached the APA by failing to provide Apex with access to its books and records relevant to the 2021 Earnout Statement and the calculations and that Cohen is not qualified to act as the arbitrator in this case. Apex also sought attorney fees and brought additional causes of action against Great Day for fraud and fraudulent misrepresentation, alleging that Great Day falsely represented with the intent to mislead Apex that it could not allow Apex access to its books and records without accessing the books and records of its other businesses.

{¶ 10} In response, Great Day sought to dismiss the amended complaint asking the trial court to (1) dismiss as moot all of Apex's claims based on Great Day's alleged failure to make a sales earnout payment for the third and fourth quarters of 2022; (2) strike or dismiss all allegations and claims in the amended complaint regarding fraud and fraudulent misrepresentation; (3) strike Apex's motion for leave to file its amended complaint in its entirety, including an award for Great Day's reasonable attorneys' fees in bringing this motion; and (4) to dismiss again the claims against Cohen. Apex opposed Great Day's motion.

{¶ 11} The court granted Great Day's motion, finding that "the amendments to the pleading other than the missed payment matter was authorized in open court are stricken as they exceed the permission granted by the court. The motion granting leave to amend in additional ways was improperly granted by the court." (Journal Entry, Jan. 27, 2023.) The trial court further found that Apex could renew its motion to amend, as to fraud, and Great Day could respond so the court could properly consider this issue.

{¶ 12} A review of the docket reveals that Apex did not renew its motion and the matter was then stayed in May 2023, pending arbitration until January 10, 2025, when Apex filed a motion to vacate the stay and reopen the case and to confirm the arbitrator's award. Apex noted that arbitration has concluded and the arbitrator issued his final determination (arbitration award) in which the arbitrator determined that Apex owes Great Day $794,299 for the Final Net Working Capital and Customer Deposits Adjustment and Great Day owes Apex $2,313,912 for the Earnout under Section 3.4 of the APA.

{¶ 13} Great Day opposed Apex's motion, contending that the arbitrator exceeded the scope of his powers and the arbitrator used improper calculations to resolve the dispute outside the scope prescribed under the APA. In support of its motion, Great Day noted that following the arbitrator's award, it sent a letter to the arbitrator stating that there appeared to be an error in the award with the calculation of the deferred revenue portion of the EBITDA Earnout and requested that the award be revised and reissued to correct this calculation. According to Great Day, the adjustment to the EBITDA at the conclusion of that section was incorrectly computed using a gross revenue figure rather than a net revenue figure. The arbitrator responded to Great Day's request and declined to modify his final determination. The arbitrator reasoned that (1) Great Day's "submissions in the Phase II . . . did not address the concept of 'net revenue' or make any substantive arguments that [Apex's] proposed deferred revenue adjustments to EBITDA should be reduced by an amount for project costs incurred by [Great Day] that were possibly deferred in a prepaid account related specifically to the deferred revenue jobs as of December 31, 2021"; and (2) "no documentation was produced by [Great Day] during the Numbers Dispute to support any adjustment to calculate a 'net revenue' figure as [Great Day] now requests." (Arbitrator's Letter, Nov. 24, 2024.)

{¶ 14} On June 3, 2025, the trial court granted Apex's motion to vacate the stay and reopened the case. Ultimately, the trial court granted Apex's motion to confirm arbitration award and denied Great Day's motion to vacate arbitration award. The court found that

> the arbitrator did not exceed the proper scope, did not display a bias, and presided with thoughtful consideration. *Queen City Lodge No. 69, FOP, Hamilton Cty., Ohio, Inc. v. City of Cincinnati*, 63 Ohio St.3d 403, 588 N.E.2d 802 (1992); *Orwell Natural Gas Co. v. PCC Airfoils, L.L.C.*, 189 Ohio App.3d 90, 2010-Ohio-3093, 937 N.E.2d 609 (8th Dist.). Accordingly, this case is hereby removed from the active docket.

(Journal Entry, July 29, 2025.)

{¶ 15} It is from this order that Great Day appeals, raising two assignments of error for review.

II. Law and Analysis

{¶ 16} Within its assigned errors, Great Day contends the trial court erred in confirming the arbitration award because the arbitration award is in violation of the arbitration agreement and the arbitrator exceeded his powers by not drawing from the essence of the arbitration agreement and the APA. Alternatively, Great Day argues the trial court erred in declining to modify the arbitration award because of the errors in the arbitrator's calculations.

A. Standard of Review

{¶ 17} *In Portage Cty. Bd. of Dev. Disabilities v. Portage Cty. Educators' Assn. for Dev. Disabilities*, 2018-Ohio-1590, the Ohio Supreme Court held that "[w]hen reviewing a decision of a common pleas court confirming, modifying, vacating, or correcting an arbitration award, an appellate court should accept findings of fact that are not clearly erroneous but decide questions of law de novo." *Id.* at syllabus, citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995). Our de novo review on appeal, however, is not a de novo review of the merits of the dispute as presented to the arbitrator. *Zeck v. Smith Custom Homes & Design, L.L.C.*, 2022-Ohio-622, ¶ 12 (8th Dist.), citing *Adams Cty./Ohio Valley Local School v. OAPSE/AFSCME, Local 572*, 2017-Ohio-6929, ¶ 18 (4th Dist.), citing *Jackson Cty., Ohio Sheriff v. FOP Ohio Labor Council, Inc.*, 2004-Ohio-3535, ¶ 19-20 (4th Dist.). Rather, we review the trial court's decision whether to vacate an arbitration award "de novo to see whether any of the statutory grounds for vacating an award exist." *Id.*

B. R.C. 2711.10(D) and "Arbitrators Exceeded Their Powers"

{¶ 18} We note the Ohio Supreme Court has held that "the statutory authority of courts to vacate an arbitrator's award is extremely limited." *Cedar Fair, L.P. v. Falfas*, 2014-Ohio-3943, ¶ 5, citing *Assn. of Cleveland Fire Fighters, Local 93 of the Internatl. Assn. of Fire Fighters v. Cleveland*, 2003-Ohio-4278, ¶ 13. As "long as arbitrators act within the scope of the contract, they have great latitude in issuing a decision. An arbitrator's improper determination of the facts or misinterpretation of the contract does not provide a basis for reversal of an award by a reviewing court, because '[i]t is not enough * * * to show that the [arbitrator] committed an error — or even a serious error.'" *Id.* at ¶ 6, quoting *Stolt-Nielsen, S.A. v. AnimalFeeds Internatl. Corp.*, 559 U.S. 662, 671 (2010). Additionally "arbitrators have 'broad authority to fashion a remedy, even if the remedy contemplated is not explicitly mentioned' in the applicable contract." *Id.*, quoting *Queen City*, 63 Ohio St.3d at 407.

{¶ 19} Notwithstanding the foregoing, a trial court may vacate an arbitration award under R.C. 2711.10(D) when the arbitrators "exceeded their powers. . . ." Whether an arbitrator has exceeded their authority under R.C. 2711.10(D) is a '"question of law'" that is reviewed de novo. *Portage Cty.* at ¶ 25, quoting *Green v. Ameritech Corp.*, 200 F.3d 967, 974 (6th Cir. 2000). An arbitrator exceeds their authority in rendering an award if the award does not draw its essence from the contract. *Queen City* at syllabus. The Ohio Supreme Court has found that an arbitrator's award departs from the essence of the contract when "(1) the award conflicts with the express terms of the agreement, and/or (2) the award is without rational support or cannot be rationally derived from the terms of the agreement." *Ohio Office of Collective Bargaining v. Ohio Civ. Serv. Emp. Assn., Local 11, AFSCME, AFL-CIO*, 59 Ohio St.3d 177 (1991), paragraph one of the syllabus.

{¶ 20} Conversely, "[a]n arbitrator's award draws its essence from a[n] . . . agreement when there is a rational nexus between the agreement and the award, and where the award is not arbitrary, capricious, or unlawful." *Mahoning Cty. Bd.*

of Mental Retardation & Dev. Disabilities v. Mahoning Cty. TMR Edn. Assn., 22 Ohio St.3d 80 (1986), paragraph one of the syllabus. """Once it is determined that the arbitrator's award draws its essence from the [agreement] and is not unlawful, arbitrary, or capricious, a reviewing court's inquiry for purposes of vacating an arbitrator's award pursuant to R.C. 2711.10(D) is at an end.""" *Zeck*, 2022-Ohio-622, at ¶ 14, quoting *Adams Cty./Ohio Valley Local School*, 2017-Ohio-6929, at ¶ 20 (4th Dist.), quoting *Bd. of Edn. of the Findlay City School Dist. v. Findlay Edn. Assn.*, 49 Ohio St.3d 129 (1990), paragraph two of the syllabus.

{¶ 21} Here, Great Day relies on *Huber Hts. v. Fraternal Order of Police*, 73 Ohio App.3d 68 (2d Dist. 1991), and argues that the arbitration award is in violation of the arbitration agreement because the award was based on a subject not submitted for arbitration under the agreement. Specifically, Great Day contends the arbitration agreement provided that the parties were to submit to the arbitrator their respective positions on the items of disagreement and all documentation in support of the respective positions. The arbitrator was then to review the submissions and base his determination solely on the parties' "submissions and not an independent review, except for research of accounting standards, if appropriate." (Arbitration Agreement/Engagement Letter, Jan. 5, 2023.) The arbitration agreement further provided that "[t]he scope of this engagement does not constitute a rendering by Crowe . . . of any legal advice, and . . . cannot be relied upon to discover all documents and other information or provide all analyses that may have relevance to this matter." (Arbitration Agreement/Engagement Letter, Jan. 5, 2023.) As a result, Great Day contends that the arbitration agreement did not provide for a "bench trial," with the examination of witnesses, the issuance of binding legal conclusions, or a lengthy opinion expounding on matters beyond the pertinent sections of the APA. Apex counters that *Huber Hts.* is distinguishable, the arbitrator was granted broad authority to decide the dispute, and there is a rational nexus between the arbitration award and the arbitration agreement.

{¶ 22} In *Huber Hts.*, a grievance between a police officer and the city (his employer) was submitted to arbitration under the terms of their collective bargaining agreement ("CBA"). In rendering the arbitration award, the arbitrator found that the city violated the terms of the CBA by its failure to comply with the terms of the grievance procedure. *Id.* at 72. As a result, the arbitrator found that while the city had just cause to suspend the officer, the officer was entitled to monetary relief equal to his salary for the five days he was suspended. *Id.*

{¶ 23} The city then filed a motion with the trial court to vacate or modify the arbitration award. The trial court found that the arbitrator had the authority to determine whether the city breached its obligations under the CBA, but ultimately held that the arbitrator exceeded his authority by awarding monetary relief equal to five days' pay because there was no rational nexus between the relief afforded and the relief permitted under the CBA. *Id.* at 73. Subsequently, the trial court vacated that portion of the award which granted the officer "damages in the amount of five days' salary and confirmed the remainder of the award, including the provision relating to the arbitrator's jurisdiction to decide the grievance procedure issue." *Id.*

{¶ 24} Both parties appealed, challenging the trial court's decision. Relevant to this case, the *Huber Hts.* Court found that the trial court erred by "adopting a 'notice' approach when it determined that the arbitrator's jurisdiction extended to the [grievance] procedural issue." *Id.,* 73 Ohio App.3d at 78. The court stated, "[R.C. Ch. 2711] confines the parameters of what the arbitrator may consider to those issues actually submitted by the parties. The statute does not permit an arbitrator to decide all issues which he considers to be before him even if he notifies the parties that he intends to consider such matters." *Id.* at 78-79.

{¶ 25} We agree with Apex that *Huber Hts.* is distinguishable from the matter before us. In *Huber Hts.*, the court found that the trial court erred by ruling that the arbitrator had jurisdiction to consider the City's alleged violation of the grievance procedure when that issue was not submitted by the parties. Whereas in this case, the parties acted consistently with the APA by jointly retaining Crowe and executing an engagement letter, which was the arbitration agreement, confirming Crowe's authority to resolve the dispute and to conduct the proceedings necessary to determine the proper accounting adjustments. According to the parties' arbitration agreement, the parties agreed to

> engage [Crowe] to resolve certain disputes pursuant to Section 3.3 "Final Net Working Capital and Customer Deposits Calculation", the Section 3.4 and 3.5 "Earnouts" of the [APA.] The Parties agree that, in providing services, Crowe will act as arbitrator for the Parties' dispute, and establish procedures for the binding arbitration consistent with the dispute procedures described in Section 3.3(b)(iii) of the [APA] Purchase Agreement.

(Arbitration Agreement/Engagement Letter, Jan. 5, 2023.) Thus, unlike in *Huber Hts.*, the arbitrator, in this case, decided the exact post-closing accounting issues, including net working capital adjustments and earnouts, submitted by the parties and referenced in both the APA and the arbitration agreement. Contrary to Great Day's arguments, the arbitrator decided only those issues presented to him. Therefore, Great Day's reliance on *Huber Hts.* is unpersuasive.

{¶ 26} Furthermore, while Great Day refers to certain portions of the arbitration agreement regarding the arbitrator's authority and procedure, the parties' submissions of the issues, and the prohibition of the arbitrator rendering legal advice, Great Day fails to acknowledge that it signed the arbitration agreement granting the arbitrator exactly these rights and Great Day fails to identify what issues were decided but not submitted.

{¶ 27} A plain reading of the arbitration agreement reveals that Great Day agreed the arbitrator's "authority derives from [R.C. Ch.] 2711" and the arbitrator may, "in its discretion, request and compel that either party or a third party provide additional information consistent with [R.C. Ch.] 2711 and Sections 3.3-3.5 of the [APA]." (Arbitration Agreement/Engagement Letter, Jan. 5, 2023.) The parties additionally agreed that the arbitrator "has the discretion to order and schedule proceedings, including in-person meetings, review and analysis of documents, discussions by telephone, and written and oral reports of findings, as it believes are appropriate and consistent with [R.C. Ch.] 2711 and Sections 3.3-3.5 of the [APA]." (Arbitration Agreement/Engagement Letter, Jan. 5, 2023.)[1]

{¶ 28} Because Great Day agreed to these terms, its argument that the arbitrator exceeded his authority by asking for information or conducting hearings is unpersuasive. The plain language of the arbitration agreement provided the arbitrator with this authority. The parties confirmed Crowe's role as neutral decision maker and authorized Crowe to conduct the proceedings in the way it deemed necessary to resolve the accounting dispute consistent with R.C. Ch. 2711 and the APA. The arbitrator conducted a two-year arbitration, considered arguments and documents submitted by the parties, and issued a detailed 38-page award resolving the accounting issues submitted by the parties.

{¶ 29} Thus, in light of the foregoing, we cannot say that the arbitrator exceeded his authority in rendering his final determination. There is a rational nexus between the arbitration award and the agreement—the arbitration agreement specifically references the "net working capital" adjustment and other adjustments under Sections 3.4-3.6 of the APA as being within the scope of the authority granted in the agreement and the award is based exclusively on these issues. The arbitrator's award draws its essence from the agreement, and we decline to substitute our

[1] We note that R.C. 2711.06 authorizes an arbitrator to conduct hearings, to subpoena witnesses to such hearings, to administer oaths to those witnesses and to direct the parties to provide "any book, record, document, or paper which is deemed material as evidence in the case."

judgment for that of the arbitrator's.[2] The trial court's confirmation of the arbitration award was proper.

C. Modification to the Arbitrator's Calculation

{¶ 30} Alternatively, Great Day seeks a modification of the arbitration award under R.C. 2711.11(A), which provides in relevant part: "the court of common pleas in the county wherein an award was made in an arbitration proceeding shall make an order modifying or correcting the award . . . if . . . [t]here was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award[.]" Great Day contends that the arbitrator committed an error in the calculation by failing to use "net revenue" as part of his net working capital calculation.

{¶ 31} Specifically, Great Day maintains that the arbitration award passes both deferred revenue and net working capital to the EBITDA calculations without accounting for materials and overhead. Based on Great Day's calculations, the award amount should be reduced by $314,502 (representing the difference between

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[2] Apex additionally contends that Great Day waived its right to dispute the arbitrator's authority and procedure because Great Day did not utilize the dispute resolution rights under the arbitration agreement. In support of its contention, Apex relies on *Rock v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 79 Ohio App.3d 126 (8th Dist. 1992), for the proposition that a party who participates in arbitration proceedings without objection waives any later challenge to the arbitrator's authority. Apex's reliance on *Rock* is misplaced. In *Rock*, this court found that party's arbitration defense was preserved in its answer and the panel reversed the trial court's dismissal of the case, which is distinguishable from the matter before us. Because Apex failed to cite any authority supporting its waiver in this instance and Great Day opposed the confirmation of the arbitration award at the trial court, we decline to address this argument. *See Walsh v. Walsh*, 2023-Ohio-1675, ¶ 9 (8th Dist.) (A court may decline to address an argument where the party fails to cite any legal authority to support their argument.).

the arbitrator's net working capital figure and Great Day's figure) as well as reduced by another $1,392,215 (representing the treatment for the deferred revenue amount using generally accepted accounting principles). This would result in an earnout payment of $607,195 from Great Day as opposed to the arbitrators' calculation of $2,313,912. Apex counters that Great Day waived this argument and there is no basis for modifying the arbitration award. We agree with Apex.

{¶ 32} It is well-established that "[t]he failure to raise an issue or argument before a lower tribunal generally constitutes a waiver of the issue or argument on appeal." *Cuyahoga Cty. v. United Autoworkers Region 2-B*, 2020-Ohio-3965, ¶ 34 (8th Dist.), citing *Fostoria v. Ohio Patrolmen's Benevolent Assn.*, 2005-Ohio-4558, ¶ 18 (The failure to raise issue before the arbitrator waived city's right to object to the scope of arbitration.). Thus, when reviewing an arbitration award, a trial court is "precluded from considering anything that was not presented to the arbitrator during the course of the arbitration proceedings." *Erie Cty. Sheriff v. FOP*, 2002-Ohio-3991, ¶ 12 (6th Dist.). A reviewing court cannot modify or vacate an award based on an argument "'that was available but was not presented to the arbitrator during the course of the arbitration proceedings.'" *Id.* at ¶ 7, quoting *Erie Cty. Sheriff v. FOP*, 2000 Ohio App. LEXIS 6050, *6 (6th Dist. Dec. 22, 2000).

{¶ 33} Great Day contends that its argument is not waived because "the issue of working capital, which necessarily includes net revenue," was mentioned "no fewer than **eighteen times** during the course of the arbitration hearing." (Emphasis in the original.) (Great Day's Reply Brief, p. 4.) While Great Day claims that the issue of working capital, which impliedly includes net revenue, was mentioned no fewer than 18 times, it only cites to the following two instances: the examination of Apex representative, who stated that the figure of $1.2 million for "accounts receivable because that [was] the last document that Apex agreed to back in the spring of 2021 when Kevin Schwartz and Doug Stelzer were reviewing and calculating working capital" and a Great Day representative who testified that the employees bonuses were considered in net working capital, "[t]he [net working] capital definition in the APA defines what shall mean networking capital, and included in it is other current liabilities consisting of employee withholdings, accrued payroll, accrued commissions and bonuses, PTO and added payroll costs. So it's very much a Component of the [net working] capital amount in calculation." (Tr. 24, 32.)

{¶ 34} The two instances cited above of "implied" testimony do not raise the issue of "net revenue" adjustments before the arbitrator nor does it preserve the issue of "net revenue" as Great Day contends. We note that "it is not the duty of an appellate court to search the record for evidence to support an appellant's argument as to any alleged error." *Rodriguez v. Rodriguez*, 2009-Ohio-3456, ¶ 7 (8th Dist.), citing *State v. McGuire*, 1996 Ohio App. LEXIS 1492 (12th Dist. Apr. 15, 1996). And App.R. 16(A)(7) requires that the appellant's brief include with each assignment of error presented for review, "citations to the . . . parts of the record on which appellant relies." This rule is designed "'to aid the reviewing court in determining whether any reversible error occurred in the lower court by having the complaining party specify the exact location(s) where such a determination can be made.'" *Rocky River v. Sanford El*, 2023-Ohio-4534, ¶ 4 (8th Dist.), quoting *Hildreth Mfg. v. Semco, Inc.*, 2003-Ohio-741, ¶ 32 (3d Dist.).

{¶ 35} Rather, the first time Great Day raised this argument was ten days after the arbitration award was issued. Great Day argued that the "adjustment to EBITDA was incorrectly computed using a gross revenue figure rather that a net revenue figure[.]" (Great Day Letter, Nov. 22, 2024.) The arbitrator responded two days later, stating:

> [Great Day's] submissions in the Phase II numbers dispute did not address the concept of "net revenue" or make any substantive arguments that [Apex's] proposed deferred revenue adjustments to EBITDA should be reduced by an amount for project costs incurred by [Great Day] that were possibly deferred in a prepaid account related specifically to the deferred revenue jobs as of December 31, 2021. In addition, no documentation was produced by [Great Day] during the Numbers Dispute to support any adjustment to calculate a "net revenue" figure as [Great Day] now requests. Each of the Parties was permitted equal and sufficient opportunity to present their position of the disputed items, including the Deferred Revenue disputed item. Consequently, [the] Final Determination of the EBITDA Earnout stands as issued on November 12, 2024.

(Arbitrator's Letter, Nov. 24, 2024.)

{¶ 36} Because Great Day failed to present this issue to the arbitrator, Great Day has waived its right to raise it on appeal. Great Day also failed to provide "evident material miscalculation of figures or an evident material mistake" in the arbitration award as required by R.C. 2711.11(A). Therefore, we decline to find that there was an error in the arbitrator's calculation and substitute Great Day's numbers for the arbitrator's calculations.

{¶ 37} Accordingly, the first and second assignments of errors are overruled.

{¶ 38} Judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

MICHELLE J. SHEEHAN, A.J., and
TIMOTHY W. CLARY, J., CONCUR