CONCURRING OPINION BY GINOZA, J.

I concur with the result. I write separately because I would not address the issue that the majority refers to as the "jurisdiction" of the arbitrator. I would also note that Respondent-Appellant AIG asserts a public policy argument that I believe has not been waived, but that lacks merit.

I agree with the majority that AIG is foreclosed in this appeal from asserting certain challenges to the circuit court's confirmation order because AIG failed to file a motion to vacate, modify, or correct the award under Hawaii Revised Statutes (HRS) § 658A-23 and/or § 658A-24 (2013 Supp.). In short, AIG has waived its right to challenge the confirmation order on any grounds allowed under HRS § 658A-23 and § 658A-24. See Schmidt v. Pac. Benefit Servs., Inc., 113 Hawaiʻi 161, 168, 150 P.3d 810, 817 (2006); Mathewson v. Aloha Airlines, Inc., 82 Hawaiʻi 57, 82, 919 P.2d 969, 994 (1996); Excelsior Lodge No. One v. Eyecor, Ltd., 74 Haw. 210, 222–28, 847 P.2d 652, 658–60 (1992); Arbitration of Bd. of Dirs. of Ass'n of Apartment Owners of Tropicana Manor, 73 Haw. 201, 213, 830 P.2d 503, 510 (1992).

One of the statutory grounds to vacate an arbitration award -- upon which AIG could have filed a motion to vacate but did not –- is that the arbitrator exceeded his powers. HRS § 658A-23(a)(4). Under the majority analysis, AIG is foreclosed from asserting that the arbitrator has exceeded his powers, and I agree. However, the majority opinion then addresses an argument it attributes to AIG as challenging the arbitrator's "jurisdiction." I disagree with addressing this issue. First, nowhere in AIG's briefing does it use the word "jurisdiction" or indicate it is challenging the arbitrator's jurisdiction. Rather, I believe the majority misconstrues AIG's argument in its opening brief that actually asserts the arbitrator *exceeded his powers* given the policy terms,[1] *i.e.* the

[1] In the relevant portion of AIG's opening brief, AIG contends that the arbitrator's award of prejudgment interest and costs were improper because these amounts exceeded the applicable policy limits. AIG argued that the arbitrator's "authority to administer the parties' arbitration was subject to, and circumscribed by the terms of the parties' arbitration agreement[,]" and that "[w]here an arbitrator *exceeds his contractually imposed authority*, the

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same argument that is foreclosed due to AIG's failure to file a motion to vacate under HRS § 658A-23(a)(4). Moreover, unlike in Tropicana Manor, no party contends, and there is nothing in the record to indicate that the arbitrator improperly reopened the arbitration proceeding. 73 Haw. at 211, 830 P.2d at 509. Thus, by characterizing AIG's argument as challenging the jurisdiction of the arbitrator, the majority opinion addresses an issue that is not asserted by AIG. Second, and most problematic, the majority opinion relies on Tatibouet v. Ellsworth, 99 Hawaiʻi 226, 234, 54 P.3d 397, 405 (2002), in discussing the purported jurisdiction argument. In Tatibouet, however, a *motion to vacate had been filed* pursuant to HRS § 658-9 (1993), the predecessor statute to HRS § 658A-23, and therefore the court was analyzing whether an arbitrator had "exceeded his powers" per the statute. Id. at 229, 232, 234, 54 P.3d at 400, 403, 405. Again, this is the very issue that AIG has waived in this case by failing to file a motion to vacate. By addressing the purported issue of jurisdiction and, particularly by citing to Tatibouet, the majority opinion unnecessarily undermines its earlier holding that AIG is foreclosed from asserting the arbitrator exceeded his powers due to AIG's failure to file a motion to vacate under HRS § 658A-23.

I further note that AIG contends the arbitration award violates public policy. If a public policy argument is asserted in opposition to a motion to confirm an arbitration award, I do not believe it is typically waived, even when a party fails to affirmatively file a motion to vacate, modify or clarify the award under HRS § 658A-23 and/or § 658A-24. See United Pub. Workers, AFSCME, Local 646, AFL-CIO v. Cnty. of Hawaiʻi, 125 Hawaiʻi 476, 490-91, 264 P.3d 655, 669-70 (App. 2011) (Ginoza, J., concurring). The public policy argument is an exception to the general deference given to an arbitration award and is not based on the grounds set forth in HRS § 658A-23 and/or § 658A-24.

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[1](...continued)
Court is empowered to refuse confirmation, and modify or vacate his award." (Emphasis added).

See Inlandboatmen's Union of the Pac., Hawaiʻi Region, Marine Div. of Int'l Longshoremen's & Warehousemen's Union v. Sause Bros., Inc., 77 Hawaiʻi 187, 193, 881 P.2d 1255, 1261 (App. 1994) (addressing HRS Chapter 658). Rather, the public policy exception is a judicially recognized basis to vacate an arbitration award. Gepaya v. State Farm Mut. Auto. Ins., 94 Hawaiʻi 362, 365, 14 P.3d 1043, 1046 (2000).

Here, AIG asserted its public policy argument in opposing Claimant-Appellee Susan Blau's motion to confirm before the circuit court, and thus in my view the public policy argument was not waived. Nonetheless, AIG's public policy argument fails on its merits. The public policy exception applies when "(1) the award would violate some explicit public policy that is well defined and dominant, and that is ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests, and (2) the violation of the public policy is clearly shown." Inlandboatmen's Union, 77 Hawaiʻi at 193–94, 881 P.2d at 1261–62 (citations, internal quotation marks, brackets and ellipses omitted). AIG cites to Kona Village Realty, Inc. v. Sunstone Realty Partners, XIV, LLC, 123 Hawaiʻi 476, 236 P.3d 456 (2010) and argues that a party's right to arbitrate in accordance with their agreements stems from their constitutionally protected right of freedom to contract. AIG thus contends that because the arbitration award exceeds the policy limits, the award was contrary to the public policy in favor of enforceable contracts. Kona Village, however, dealt with statutes and contract provisions relating to attorney's fees, and did not address policy limit issues that are raised in this case. Id. at 476-78, 236 P.3d at 456-58. AIG's argument fails to demonstrate that the arbitration award in this case violates an explicit public policy that is well defined and dominant, and thus AIG does not meet the standard for the public policy exception to apply.

For the reasons set forth above, I concur.