

Electronically Filed
Supreme Court
SCWC-22-0000364
30-SEP-2026
08:01 AM
Dkt. 40 OP

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

---o0o---

NAVATEK CAPITAL INC., individually and derivatively on
behalf of Nominal Defendant PacMar Technologies LLC,
fka Martin Defense Group, LLC, fka Navatek LLC,
Respondent/Plaintiff-Appellee,

vs.

MARTIN KAO,
Petitioner/Defendant/Cross-Claim Defendant-Appellant,

and

PACMAR TECHNOLOGIES, LLC,
fka Martin Defense Group, LLC, fka Navatek LLC,
Respondent/Nominal Defendant/Cross-Claimant-Appellee.

SCWC-22-0000364

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-22-0000364; CASE NO. 1CCV-20-1511)

SEPTEMBER 30, 2026

McKENNA, ACTING C.J., EDDINS, AND GINOZA, JJ., AND
CIRCUIT JUDGE COSTA, IN PLACE OF DEVENS, C.J., RECUSED, AND
CIRCUIT JUDGE COPELAND, ASSIGNED BY REASON OF VACANCY

OPINION OF THE COURT BY MCKENNA, ACTING C.J.

I. Introduction

In this appeal, we address whether a motion to vacate an arbitration award should have been granted. Hawai'i Revised Statutes ("HRS") § 658A-23(a)(3) provides, in relevant part:

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award in the arbitration proceeding if:

. . . .

(3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement . . . so as to prejudice substantially the rights of a party to the arbitration proceeding[.]

. . . .

Martin Kao ("Kao") contends the arbitrator refused to postpone an arbitration proceeding despite the existence of "sufficient cause for postponement," with the cause being the filing of criminal charges against him.

The parties to the arbitration, the arbitrator, and the lower courts all applied the test laid out in Keating v. Office of Thrift Supervision, 45 F.3d 322 (9th Cir. 1995), to determine whether there was "sufficient cause for postponement." Keating says that in determining whether to stay a civil proceeding due to pending criminal charges, a court is to consider the following five factors:

(1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the

interest of the public in the pending civil and criminal litigation.

45 F.2d at 324 (citation omitted) ("Keating factors").

But the Keating factors are based on federal constitutional principles, which are much less protective of a defendant's right against self-incrimination. We therefore instead set out three factors grounded on Hawai'i constitutional principles, more fully explained below, for courts to consider in determining whether to stay a civil proceeding based on the actual or anticipated institution of criminal charges: (1) whether the constitutional risk to defendant is concrete and imminent; (2) prejudice from a delay; and (3) whether there is a less restrictive alternative.

Applying this new standard, we hold that "sufficient cause for postponement" was still lacking under the circumstances. Hence, there was no error in denying the motion for vacatur. We also hold that there was no error in refusing to set aside the arbitrator's award of punitive damages.

Subject to the analysis in this opinion, we therefore affirm the Intermediate Court of Appeals' ("ICA") August 29, 2025 judgment on appeal.

II. Background

A. Factual Background

Steven Loui ("Loui") founded Navatek Ltd. in 1979 and led it for approximately forty years. The majority of its business

stemmed from classified government contracts with the Defense Advanced Research Projects Agency ("DARPA") of the United States Department of Defense ("DOD") as well as other partners in academia and scientific fields. Because the work involved classified information, Navatek Ltd. was required to obtain a facility security clearance ("FCL") from the Defense Counterintelligence and Security Agency ("DCSA").

Kao joined Navatek Ltd. as its Chief Financial Officer in 2008 and later became its Chief Executive Officer ("CEO") in 2012. In June 2018, Loui formed Navatek Capital Inc. ("NCI"), which became the sole owner of Navatek Ltd. In August 2018, Navatek Ltd. converted to a limited liability company and its corporate name changed to Navatek LLC ("Navatek"). NCI owned one hundred percent of Navatek until August 31, 2018. Around that time, Loui decided to step away from the company and believed he had found a worthy successor in Kao.

On March 1, 2019, Loui, through NCI, transferred a ninety-nine percent interest in Navatek's future profits and losses to Kao, while retaining a one percent interest. Kao paid no cash for this interest. On the same day, NCI and Kao, as sole members of Navatek, executed an operating agreement ("Operating Agreement" or "Agreement"), under which Kao became sole manager of Navatek from March 2019 through November 2020. Kao was advised to retain his own attorney during negotiations, but he

falsely represented he was an attorney and held law degrees from the University of California, Los Angeles and New York University.

Section 8 of the Operating Agreement is a "Covenant Not to Breach" and lists consequences for violating that covenant, including disassociation and damages:

8.1 Covenant Not to Breach. Each Member hereby covenants and agrees that the Members have entered into this Agreement based on their mutual expectation that all Members will continue as Members and carry out the duties and obligations undertaken by them hereunder and that, except with the consent of the Members, each member hereby covenants and agrees as follows:

. . . .
(e) Not to commit a breach of any material covenant contained in this Agreement or default on any material obligation provided for in this Agreement if such breach or default continues for thirty (30) days after the date such Member has been given notice of such breach or default by the Management Committee or any other Member.

8.2 Consequences of Violation of Covenants. If a Member (a "Breaching Member") attempts to take any or has taken any action in breach of Section 8.1 (a "Breach"), the Company shall continue and such Member shall be subjected to this Section 8.2. In such an event, the following shall occur:

(a) The Breaching Member shall immediately be disassociated and thereby cease to be a Member, shall have no further power to act as a Member of the Company and shall become an Assignee as if he were the recipient of a prohibited Transfer of his Units under Section 7.3;

. . . .
(c) The Breaching Member shall be liable for damages, without requirement of a prior accounting, to the Company for all costs and liabilities that the Company or any Member may incur as a result of the Breach[.]

(Emphasis added.)

Section 12.2 identifies the law governing the Agreement:

12.2 Governing Law. This Agreement is intended to be performed in the State of Hawai[']i and shall in all respects be governed by and construed in accordance with, the laws of the State of Hawai[']i, including as to all matters of construction, validity, and performance but

without giving the effect to the conflict of law provisions thereof.

(Emphasis added.)

Section 12.22 addresses mediation and arbitration:

12.22 Mediation and Arbitration. The parties, at the option of any party, to try in good faith to settle any difference arising out of or relating to the terms or conditions or subject matter of this Agreement by mediation and that, if the agreement cannot be reached by mediation, to submit the difference to binding arbitration. Any arbitration shall be conducted in accordance with the rules for Arbitration of Disputes of the Dispute Prevention and Resolution, Inc. ("DPR") or its successor. The award of the arbitration shall be final and binding, and judgment upon the award may be entered in any court having jurisdiction thereof. This procedure shall be the exclusive means of settling any dispute that may arise under this Agreement. All fees and expenses of the arbitrator and all other expenses of the arbitration, except for the fees and expenses of each party's attorneys and witnesses, shall be shared equally by the parties thereto. Notwithstanding anything contained in the DPR's Arbitration Rules, Procedures and Protocols or in applicable law or elsewhere, and pursuant to the Uniform Arbitration Act, as codified in Hawai['i] Revised Statutes § 658A, as amended, the parties and arbitrator shall be bound by the following:

. . . . The arbitration shall be conducted in such a manner that the decision will be rendered no more than one hundred twenty (120) days after the submission of the dispute to DPR.

(Emphasis added.)

In spring 2020, Kao fraudulently obtained more than \$12.8 million in Paycheck Protection Program ("PPP") funds on behalf of Navatek and transferred approximately \$2 million to himself.¹ After becoming aware of the PPP loans, Loui confronted Kao on

¹ The PPP was authorized by Congress in the Coronavirus Aid, Relief, and Economic Security Act, Pub.L.No. 116-136, 134 Stat.281 (2020), to provide emergency financial assistance to the millions of Americans who were suffering from the economic effects caused by the COVID-19 pandemic through forgivable loans to small businesses for job retention and other specified resources.

July 23, 2020, and warned him that illegal activities by Navatek executives could result in debarment from federal contracts and invalidation of Navatek's FCL. After Kao refused to turn over the PPP loan applications, Loui, on advice of legal counsel, reported the matter to the United States Department of Justice ("DOJ").

On July 27, 2020, Kao changed the name of the company from Navatek to Martin Defense Group, LLC ("MDG").²

On August 6, 2020, federal investigators interviewed Loui. Loui said he did not believe MDG was suffering financially as a result of the COVID-19 pandemic and that the employee headcounts Kao reported for Navatek were inaccurate. Federal investigators also interviewed the former payroll and benefits manager at Navatek, who confirmed that the number of employees Kao reported as being employed by Navatek was overstated.

On September 29, 2020, the DOJ filed a criminal complaint against Kao, charging him with two counts of bank fraud, in violation of 18 U.S.C. § 1344(2), and five counts of money laundering, in violation of 18 U.S.C. § 1957.³

² MDG has undergone several name changes since the company's formation. For ease of reference, we will refer to the company as MDG throughout this opinion.

³ The following additional offenses were also asserted: (1) directly and indirectly making federal campaign contributions as a federal government contractor, in violation of 52 U.S.C. § 30119; (2) making political contributions in the name of other persons or entities, in violation of 52 (continued . . .)

B. Procedural Background

1. Initial Circuit Court Proceedings

In light of the federal criminal complaint, NCI, individually and derivatively on behalf of nominal defendant MDG, filed a civil complaint against Kao and MDG in the Circuit Court of the First Circuit ("circuit court") on November 9, 2020. The complaint sought Kao's disassociation from NCI as well as damages based on breach of fiduciary duty, fraud, and gross negligence. NCI also requested injunctive relief to obtain access to the books and records of MDG and to compel Kao's disassociation as MDG's controlling voting member pursuant to section 8.2(a) of the Operating Agreement.

On November 18, 2020, an official from the U.S. Navy sent MDG a letter advising that it would commence proceedings to determine whether to suspend or debar MDG from contracting with the federal government.

On November 20, 2020, NCI, MDG, and Kao stipulated that Daniel Brunk ("Brunk") would replace Kao as the CEO and sole manager of MDG and that NCI would receive access to MDG's books and records. Short of complete disassociation, NCI and Kao agreed not to exercise their ownership interests in MDG or transfer their respective ownership interests in NCI and MDG.

(. . . continued)
U.S.C. § 30122; and (3) engaging in self-dealing by improperly using company funds for personal gain.

To enforce the stipulation and to protect MDG's current and possible future contracts with the federal government, on December 31, 2020, MDG filed a motion for a Voting Trust Agreement and an order compelling Kao to execute an Amended Operating Agreement. On January 5, 2021, the circuit court granted the motion to compel Kao to execute the Amended Operating Agreement. The Amended Operating Agreement memorialized Kao's resignation as CEO and sole manager of MDG and designated Brunk as the new CEO and sole manager but did not modify sections 8, 12.2, and 12.22 of the initial Operating Agreement. The Voting Trust Agreement, which Kao signed, required Kao to relinquish control of voting rights related to his ownership in MDG.

Despite MDG's efforts to distance itself from Kao and reduce his access and control over the company, the DCSA invalidated MDG's FCL on January 21, 2021, preventing it from winning new government contracts.

On March 10, 2021, Kao filed a motion to dismiss or, in the alternative, to compel arbitration and stay the civil case.

On March 16, 2021, the U.S. Navy issued a decision declining to suspend MDG from working with the federal government for the time being.

On March 25, 2021, NCI, MDG, and Kao executed an "Agreement to Participate in Binding Arbitration" for an arbitrator to

"determine all issues submitted to arbitration" and "grant any and all remedies . . . determine[d] to be just and appropriate under law."

Attorney Jerry M. Hiatt was selected as the arbitrator ("Arbitrator").

2. Arbitration Proceedings

On May 6, 2021, a federal grand jury returned an indictment charging Kao with three counts of wire fraud, in violation of 18 U.S.C. § 1343, and four counts of money laundering, in violation of 18 U.S.C. § 1957.

Despite having earlier moved to compel arbitration, on May 24, 2021, Kao requested that the Arbitrator stay the arbitration pending resolution of his criminal case. He argued that the arbitration timeline and discovery process would cause him significant prejudice, compromising his rights against self-incrimination and to due process and a fair trial under the U.S. and Hawai'i Constitutions.

The parties cited Keating, 45 F.3d at 324, as controlling whether Kao's motion should be granted. The Arbitrator conducted a remote hearing on Kao's motion to stay on May 27, 2021. After hearing arguments, the Arbitrator orally denied the motion. Kao's counsel then suggested but did not request that the Arbitrator consider bifurcating the arbitration proceedings between liability and damages. The Arbitrator responded he was

open to considering bifurcation. On June 6, 2021, the Arbitrator entered a written order denying Kao's motion to stay, citing Keating.

The parties then proceeded to arbitration. The Arbitrator heard seven days of testimony from approximately fifteen witnesses and received hundreds of exhibits.

On the first day of the arbitration hearing, the parties stipulated to extend the deadlines for post-hearing briefs and the final arbitration award beyond the 120-day limit set forth in section 12.22 of the Operating Agreement.⁴

On the second day, DCSA revalidated MDG's FCL to active status. But NCI's expert witness, Steven Shaw, who had served as the U.S. Air Force's suspension and debarment official for sixteen years, testified that a federal contractor like MDG faces a significant risk of suspension or debarment if it fails to oust a principal owner who is suspended or debarred, like Kao. Shaw opined that the Voting Trust Agreement mitigated this risk, but because Kao was still the principal owner and a superseding indictment remained possible, MDG would still be exposed to suspension or debarment, regardless of whether Kao

⁴ There were four stipulations and orders extending the pre-hearing and post-hearing deadlines with the parties' consent, including an agreement to extend the deadline for the final arbitration award from September 1, 2021 to November 29, 2021.

was making the high-level decisions. Shaw opined that disassociating Kao from MDG would put MDG in a better position.

On the third day, Brunk testified that the biggest threat facing MDG when he joined was a possible suspension from government contracting, which would eliminate MDG's revenue and render the company insolvent within two weeks. Although the Navy had declined to suspend MDG on March 16, 2021, Brunk explained that, unless Kao was disassociated, MDG still faced the risk of suspension if new developments arose in his criminal case.

On the fourth day, the parties disputed whether the Arbitrator had the authority to determine MDG's valuation and Kao's capital account for purposes of calculating monetary damages. NCI indicated an expert report was necessary and suggested a bifurcation to allow it additional time to obtain an expert witness. But, departing from his earlier suggestion, Kao opposed bifurcation. The Arbitrator then ruled the issues were properly before him and within his authority to decide.

On the sixth day, the Arbitrator raised the issue of punitive damages sua sponte.

On the last day, the Arbitrator confirmed that Kao would not be testifying based on his right against self-incrimination. The Arbitrator indicated he would not draw any adverse inferences based on Kao's decision not to testify.

The Arbitrator issued his final arbitration award ("Arbitration Award") on November 23, 2021, in favor of NCI and MDG, and calculated the total amount of damages, plus attorneys' fees and costs, as follows:

CATEGORY	AMOUNT
Special Damages	\$2,268,805.40
Punitive Damages	\$4,537,610.80
MDG Attorneys' Fees and Costs	\$1,608,046.77
NCI Attorneys' Fees and Costs	\$1,117,646.72
TOTAL FINAL AWARD	\$9,532,109.82
Less Present Value of Capital Account	\$(1,986,490.00)
Less Setoff Against Capital Account	\$(1,419,838.02)
Total Credits Against Final Award	\$(3,406,328.02)
TOTAL FINAL AWARD STILL DUE	\$6,125,781.80

Because of Kao's pattern of misconduct and fraud, the Arbitrator awarded prejudgment interest in favor of MDG at the statutory rate of ten percent on the \$6,125,781.80 due.

In awarding punitive damages, the Arbitrator considered the purpose of such damages, the facts of the case, the harm done to MDG and NCI, the harm done to MDG's employees, "and the truly shocking misuse of [federal] tax dollars . . . to fund . . . Kao's reckless fraud." Citing Exxon Shipping Co. v. Baker, 554 U.S. 471, (2008), the Arbitrator determined the case had all of the earmarks of exceptional blameworthiness, justifying a substantial award of punitive damages. The Arbitrator noted Kao's conduct was clearly egregious, intentional, and motivated by greed.

In determining the amount of punitive damages, the Arbitrator noted that Kao had personally valued his net worth at

\$40,500,000.00 as of March 4, 2019, and \$77,936,764.00 as of September 14, 2020, in his own signed personal financial statements. While recognizing that the financial statements may have been grossly exaggerated given Kao's history of fraud, the Arbitrator found they reflected Kao's own valuation of his net worth and were probative of how he personally valued the gains he received from MDG.

3. Circuit Court Proceedings

On December 7, 2021, NCI filed a motion with the circuit court to confirm the Arbitration Award. MDG filed a joinder. On February 18, 2022, Kao filed a motion to vacate the arbitration award. A remote hearing on the motions took place on April 1, 2022.

The parties disputed the meaning of "sufficient cause" "to postpone." NCI argued "sufficient cause" was equivalent to "good cause," while Kao's counsel argued it was a lower standard.

With respect to Keating's applicability, Kao conceded the case was not controlling, because it was not decided under Hawai'i law, but nevertheless argued it should apply because the Arbitrator and the parties so stipulated.

As to punitive damages, NCI and MDG asserted that, under the parties' agreement to participate in binding arbitration,

DPR's rules, and HRS § 658A-21(a),⁵ the Arbitrator had the authority to decide all issues and award all remedies, including punitive damages. They asserted punitive damages against Kao were warranted based on the tort claims of fraud, breach of fiduciary duty, and gross negligence. Citing HRS § 658A-21(e),⁶ Kao asserted the Arbitrator failed to specify the factual and legal bases justifying and authorizing the punitive damages award and also that there was an absence of evidence of Kao's net worth. Kao also contended that the arbitration involved only a breach of contract claim, for which punitive damages are not permitted.

The circuit court orally denied Kao's motion to vacate. It concluded that the Arbitrator had adequate grounds to award punitive damages and that Kao had not shown "sufficient cause," which it deemed equivalent to "good cause," to vacate the Arbitration Award.

⁵ HRS § 658A-21(a) (2016) provides:

(a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

⁶ HRS § 658A-21(e) (2016) provides:

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a), the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

On April 27, 2022, the circuit court entered a written order denying Kao's motion to vacate. On the same day, it also entered its findings of fact, conclusions of law, and order granting NCI's motion to confirm the Arbitration Award as well as MDG's joinder. The circuit court entered its final judgment on April 28, 2022.

4. ICA Proceedings

The ICA vacated in part and affirmed in part the circuit court's final judgment. Navatek Cap. Inc. v. Kao, NO. CAAP-22-0000364, 2025 WL 2157693, at *3 (Hawai'i App. July 29, 2025) (SDO). The ICA vacated because, with the exception of the punitive damages issue, the circuit court had not addressed various bases on which Kao had moved to vacate the Arbitration Award; these bases are not at issue on certiorari.

But relevant to this certiorari proceeding, the ICA concluded that (1) the Arbitrator did not abuse his discretion in denying Kao's motion to stay; (2) the circuit court did not err in deferring to the Arbitrator's application of Keating; (3) the circuit court's denial of Kao's motion to vacate did not violate HRS § 658A-23(a)(3); and (4) the circuit court did not err in finding that the Arbitrator did not exceed his authority in awarding punitive damages. Id. at *2-3.

5. Certiorari Proceedings

We granted Kao's certiorari application challenging the Arbitrator's denial of his motion to stay and to set aside the punitive damages award. We also ordered supplemental briefing on the following questions:

1. What constitutes "sufficient cause for postponement" under HRS § 658A-23(a) (3)?
2. What factors should be considered in deciding whether a civil proceeding in Hawai'i should be stayed due to pending criminal charges based on Article I, Section 10 of the Hawai'i Constitution?

III. Standard of Review

A. Appellate Review of a Motion to Vacate Arbitration Award

Appellate review of a motion to vacate [] does not involve review of an arbitrator's findings of fact or conclusions of law. Rather, it involves review of a circuit court's factual findings and conclusions of law as to whether the statutorily outlined grounds for vacatur exist.

Nordic PCL Constr., Inc. v. LPIHGC, LLC, 136 Hawai'i 29, 42, 358

P.3d 1, 14 (2015).

B. Findings of Fact and Conclusions of Law

We review a trial court's findings of fact under the clearly erroneous standard.

A finding of fact is clearly erroneous when, despite evidence to support the finding, the appellate court is left with the definite and firm conviction in reviewing the entire evidence that a mistake has been committed. A finding of fact is also clearly erroneous when the record lacks substantial evidence to support the finding. We have defined 'substantial evidence' as credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion.

Hawai'i appellate courts review conclusions of law de novo, under the right/wrong standard. Under the right/wrong standard, this court examines the facts and

answers the question without being required to give any weight to the trial court's answer to it.

Nordic, 136 Hawai'i at 41, 358 P.3d at 13.

C. Judicial Review of Arbitration Awards

Where a party challenges an arbitration award, the following precepts are applicable. First, because of the legislative policy to encourage arbitration and thereby discourage litigation, arbitrators have broad discretion in resolving the dispute. Upon submission of an issue, the arbitrator has authority to determine the entire question, including the legal construction of terms of a contract or lease, as well as the disputed facts. In fact, where the parties agree to arbitrate, they thereby assume all the hazards of the arbitration process, including the risk that the arbitrators may make mistakes in the application of law and in their findings of fact.

Second, correlatively, judicial review of an arbitration award is confined to the strictest possible limits. An arbitration award may be vacated only on the [six] grounds specified in HRS § [658A-23] and modified and corrected only on the three grounds specified in HRS § [658A-24]. Moreover, the courts have no business weighing the merits of the award.

Third, HRS §§ [658A-23 and -24] also restrict the authority of appellate courts to review judgments entered by circuit courts confirming or vacating the arbitration awards.

Id. (cleaned up).

Judicial review of arbitration awards remains limited to the statutory grounds for confirmation, vacatur, modification, and correction. See HRS § 658A-28(a)(3)-(5) (Supp. 2010) (permitting appeal from an order confirming or denying confirmation of an award, an order modifying or correcting an award, or an order vacating an award).

. . . [I]n reviewing an arbitration award, [] courts are powerless to correct an arbitrator's findings of fact even if clearly erroneous, or an arbitrator's rulings on the law, even if wrong.

Nordic, 136 Hawai'i at 41-42, 358 P.3d at 13-14 (cleaned up).

D. Statutory Interpretation

Our standard of review for statutory interpretation is well-established. "The interpretation of a statute is a question of law which [the appellate] court reviews de novo." Sierra Club v. Dep't of Transp., 120 Hawai'i 181, 197, 202 P.3d 1226, 1242 (2009) (cleaned up). Our construction of statutes is guided by the following principles:

First, the fundamental starting point for statutory-interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists.

When there is ambiguity in a statute, "the meaning of the ambiguous words may be sought by examining the context with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning." Moreover, the courts may resort to extrinsic aids in determining legislative intent, such as legislative history, or the reason and spirit of the law.

State v. Wheeler, 121 Hawai'i 383, 390, 219 P.3d 1170, 1177 (2009) (cleaned up).

IV. Discussion

A. The circuit court correctly adopted the "good cause" standard to define "sufficient cause" in HRS § 658A-23(a)(3), but wrongly deferred to the Arbitrator's application of Keating.

Kao argues the Arbitrator misapplied the Keating factors in denying his motion to stay, leaving him defenseless against NCI's and MDG's claims and with no other option but to invoke

his right against self-incrimination under the U.S. and Hawai'i Constitutions.

Preliminarily, the parties agreed that the Keating factors controlled, both at the arbitration and throughout the judicial proceedings below. Courts cannot review the legal conclusions of arbitrators. Here, we review the circuit court's conclusion of law regarding whether "sufficient cause for postponement" existed to require vacatur under HRS § 658A-23(a)(3).

And party stipulations as to questions of law are not binding, and our courts are not relieved from the obligation to review questions of law de novo. Hawaiian Ass'n of Seventh-Day Adventists v. Wong, 130 Hawai'i 36 at 46, 305 P.3d 452 at 462 (2013) (cleaned up). So we are not bound by the parties' stipulation that Keating controls the analysis of whether there was "sufficient cause for postponement" for a vacatur pursuant to HRS § 658A-23(a)(3).

We therefore address what standard applies. Here, neither HRS § 658A-23(a)(3) nor HRS § 658A-1 defines "sufficient cause for postponement." At the April 1, 2022 hearing on Kao's motion to vacate, the parties debated whether the "good cause" standard applies to HRS § 658A-23(a)(3). NCI argued that the Arbitrator correctly found no "good cause" to postpone the arbitration proceeding after applying the Keating factors. Kao countered that "sufficient cause" is a lower standard than "good cause,"

which he claimed to have satisfied. In its oral ruling and in its written order denying the motion to vacate, the circuit court concluded there was an insufficient showing of "good cause" to grant the motion for vacatur.

In statutory interpretation, "[w]hen a term is not statutorily defined, this court may resort to legal or other well-accepted dictionaries as one way to determine its ordinary meaning." Est. of Roxas v. Marcos, 121 Hawai'i 59, 66, 214 P.3d 598, 605 (2009) (cleaned up).

One definition of "sufficient cause" in Black's Law Dictionary is "good cause." Black's Law Dictionary 1739 (12th ed. 2024). In turn, "good cause" is defined as:

A legally sufficient reason. Good cause is often the burden placed on a litigant (usu. by court rule or order) to show why a request should be granted or an action excused. The term is also used in employment-termination cases. - Also termed *good cause shown*; *just cause*; *lawful cause*; sufficient cause.

Black's Law Dictionary 275 (12th ed. 2024) (emphasis added).

In other words, the terms "sufficient cause" and "good cause" are interchangeable.

HRS § 658A-15(c) (2016) also supports the interpretation that "sufficient cause" in HRS § 658A-23(a)(3) is the same as "good cause." HRS § 658A-15(c) states that "for good cause shown," an "arbitrator may adjourn the hearing from time to time as necessary but shall not postpone the hearing to a time later than that fixed by the agreement to arbitrate" absent the

parties' consent. Thus, HRS § 658A-15(c) is a statute on the same subject matter as HRS § 658A-23(a)(3) that can be read in pari materia with the latter. Hence, "sufficient cause" is interchangeable with "good cause."

For these reasons, the circuit court did not err in applying the "good cause" standard to define "sufficient cause" in HRS § 658A-23(a)(3). But the circuit court erred in determining whether "good cause" existed by deferring to the Arbitrator's application of the Keating factors. Rather, the circuit court was independently applying the requirements under HRS § 658A-23(a)(3).

As noted, party stipulations as to questions of law are not binding and our courts are not relieved from the obligation to review questions of law de novo. Wong, 130 Hawai'i at 46, 305 P.3d at 462. The five-factor test in Keating, 45 F.3d at 324, is grounded in an analysis of the Fifth Amendment to the United States Constitution. But this court provides criminal defendants with greater protections under the Hawai'i Constitution's article I, section 10 privilege against self-incrimination than federal courts do under the Fifth Amendment. See State v. Garces, 158 Hawai'i 532 at 535, 595 P.3d 108 at 111 (2026). We therefore decline to adopt the Keating factors.

First, an explanation of Keating. The civil proceeding in Keating involved an administrative law matter that resulted in

an order that banned Charles Keating, Jr., from the federally insured banking industry and directed him to pay restitution. Keating, 45 F.3d at 324. Keating claimed his due process rights were violated, in part, because "the pending criminal proceedings forced him to invoke his Fifth Amendment privilege during the . . . hearing, depriving him of an opportunity to testify on his own behalf." Keating, 45 F.3d at 324. The timeline of the parallel proceedings was summarized as follows:

The [Office of Thrift Supervision ("OTS")] hearing began eleven months after the notice of charges issued. The notice issued on August 9, 1990. The hearing took place in Los Angeles from July 1 to 3 and July 8 to 12, 1991. On July 12 the OTS hearing was suspended for nine months. The state trial began on Aug. 4, 1991, resulting in conviction on Dec. 4, 1991. Keating was then indicted on federal charges on Dec. 12, 1991. On March 24, 1992, two of the four OTS charges were severed because they concerned the transactions on which the federal indictment was based. The OTS hearing on the remaining two charges resumed in Phoenix, Arizona on April 27, 1992. The hearing concluded on May 1, 1992. Keating's federal criminal trial began six months later, on November 2, 1992.

Keating, 45 F.3d at 325.

The Ninth Circuit noted that after the federal indictment, the OTS successfully moved to sever two of the four administrative counts that overlapped with the federal indictment. Keating, 45 F.3d at 325. But Keating claimed there was still significant overlap between the subject matter of the remaining administrative counts and the federal criminal trial,

which made it necessary to invoke his Fifth Amendment privilege.⁷ Keating, 45 F.3d at 325. The administrative law judge ("ALJ") determined that any burden on Keating was far outweighed by the public interest in a speedy resolution of the case. Keating, 45 F.3d at 325.

The Ninth Circuit affirmed, concluding that any remaining overlap between the administrative and criminal proceedings did not make the ALJ's refusal to stay the administrative proceeding an abuse of discretion. Keating, 45 F.3d at 325-26. According to the Ninth Circuit, "[n]ot only is it permissible to conduct a civil proceeding at the same time as a related criminal proceeding, even if that necessitates invocation of the Fifth Amendment privilege, but it is even permissible for the trier of fact to draw adverse inferences from the invocation of the Fifth Amendment in a civil proceeding." Keating, 45 F.3d at 326 (emphasis added) (citing Baxter v. Palmigiano, 425 U.S. 308, 318-19 (1976)). The Ninth Circuit then ruled that despite the potential implication of Keating's Fifth Amendment rights, the ALJ did not abuse his discretion in deciding that the balance favored proceeding with the hearing. Keating, 45 F.3d at 326.

As can be seen, in Keating, the Ninth Circuit embraced the United States Supreme Court's decision in Baxter, 425 U.S. 308.

⁷ The Ninth Circuit did not identify the federal criminal charges against Keating. See Keating, 45 F.3d at 322.

Baxter clearly holds that the Fifth Amendment does not forbid adverse inferences against parties to civil actions who raise the Fifth Amendment right against self-incrimination. 425 U.S. at 318.

In direct contrast to Baxter and Keating is this court's opinion in Kaneshiro v. Belisario, 51 Haw. 649, 466 P.2d 452 (1970).⁸ In Belisario, this court expressly held that even in civil cases, there can be no comment on or adverse inference drawn against a party who asserts their right against self-incrimination; we grounded this holding in part on article I, section 10 of the Hawai'i Constitution. 51 Haw. at 654, 466 P.2d at 455. Therefore, in contrast with the United States Supreme Court's interpretation of the Fifth Amendment, this court holds that Article I, Section 10 of the Hawai'i Constitution protects a criminal defendant's right against self-incrimination, even in civil proceedings.

⁸ This principle against adverse inferences is also reflected in Rule 513 of the Hawai'i Rules of Evidence ("HRE") (1980), which provides in relevant part:

**Comment upon or inference from claim of
privilege; instructions.**

(a) Comment or inference not permitted. The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.

(Emphasis added.)

This difference is probably why the five Keating factors actually show minimal concern for a criminal defendant's right against self-incrimination:

(1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation.

Keating, 45 F.3d at 324.

Under Keating, the first consideration is the plaintiff's interest in proceeding expeditiously and potential prejudice to the plaintiff. The third factor focuses on the court's convenience. The fourth considers the interests of those that are not parties to the civil litigation. The fifth considers the interest of the public. Only the second factor even touches on a defendant's right against self-incrimination.

We therefore reject Keating. In light of our robust protection of the Article I, Section 10 right against self-incrimination, we hold that in addressing whether to stay a civil proceeding pending the actual or anticipated institution of criminal charges, Hawai'i courts should instead evaluate three factors: (1) whether the constitutional risk to defendant is concrete and imminent; (2) prejudice from a delay; and (3) whether there is a less restrictive alternative.

The first factor takes into account the extent to which the privilege against self-incrimination is implicated, the degree of factual overlap between the civil and criminal cases, and the status of the criminal proceeding.

The second factor focuses on the hardship and expense of the nonmovant due to postponement, whether the parties have previously consented to postponement, whether postponement might foreclose the nonmovant from presenting relevant evidence, and the public's interest in the prompt disposition of the case.

The third factor asks whether there is a more tailored solution available, including a shorter delay or bifurcation of the proceedings.

These considerations are non-exclusive and the second factor allows consideration of "prejudice" to those other than the criminal defendant. But the second factor should not be weighed heavily in favor of the interests of others in light of the greater protections afforded to criminal defendants under the Hawai'i Constitution.

B. Applying the new test, Kao failed to satisfy the "sufficient cause for postponement" standard in HRS § 658A-23(a) (3)

Kao argues he was unable to testify in his own defense during the arbitration because he feared his testimony could be used against him in the parallel federal criminal trial arising from the same underlying facts. He argues he was therefore

forced to invoke his right against self-incrimination. Even though the Arbitrator indicated he was not drawing adverse inferences based on Kao's refusal to testify, he contends that he was unable to present his own testimony in his defense. He therefore asserts the circuit court erred by denying his motion for vacatur because the Arbitrator refused to stay the proceedings despite this "sufficient cause for postponement."

We now apply the factors we have set out to address Kao's assertions. To repeat, the three factors are (1) whether the constitutional risk to defendant is concrete and imminent; (2) prejudice from a delay; and (3) whether there is a less restrictive alternative.

The first factor weighs in favor of Kao. As noted above, the constitutional risk was concrete and imminent because Kao's civil and criminal cases arose from the same underlying facts.

The second factor weighs in favor of NCI. The parties had already stipulated to delay the arbitration proceedings four times, and NCI and MDG pointed out many reasons why they would have experienced hardship and expense if the arbitration proceedings were postponed.

For example, by May 27, 2021, MDG's FCL had been invalidated for about five months, despite the Amended Operating Agreement and the Voting Trust Agreement, which removed Kao as CEO and sole manager and reduced his access and control over the

company. Without an FCL, MDG could not win government contracts, shutting off new revenue streams.

Although the Navy suspension and debarment official declined to suspend MDG from government contracting on March 16, 2021, averting immediate insolvency, the decision was without prejudice. Hence, MDG continued to face the risk of suspension if new developments, such as a potential superseding indictment, occurred during Kao's federal criminal proceedings while he remained principal owner of MDG.

Further, MDG was under financial pressure to repay about \$10 million in PPP loans, \$2 million of which had already been transferred to Kao's personal bank account. Since NCI held a one-percent interest in MDG's future profits and losses, valued at \$2.5 million, it too faced financial loss if MDG defaulted on the loans or became insolvent.

In addition, MDG had already lost ninety key employees from a total workforce of 170.

For these reasons, NCI and MDG had extremely strong interests in proceeding expeditiously with arbitration to ensure Kao's disassociation from the company, stem the loss of employees, and revalidate its FCL. In addition, the public's interest in the prompt disposition of the civil case was high, due to the gravity of the allegations against Kao that involved the public fisc.

The third factor also weighs in favor of NCI. In terms of less restrictive alternatives, although Kao had earlier suggested bifurcation, when NCI's counsel later requested bifurcation, Kao sharply opposed it.

All in all, we hold that Kao failed to make a "showing of sufficient cause for postponement" under HRS § 658A-23(a)(3). Therefore, the circuit court did not err by denying Kao's motion for vacatur.

C. The ICA did not err in affirming the circuit court's order confirming the Arbitrator's punitive damages award.

Kao also argues on certiorari that HRS § 658A-21(e) limits the Arbitrator's authority to award punitive damages because there was no legal basis to authorize such an award. Kao's contention lacks merit.

Kao does not dispute that HRS § 658A-21(a) granted the Arbitrator discretion to award punitive damages. Nor does he contest the validity of the Operating Agreement or the Agreement to Participate in Binding Arbitration, which states that "the Arbitrator shall determine all issues . . . and may grant all remedies that the Arbitrator determines to be just." Kao claims that the Arbitrator exceeded his authority by awarding punitive damages because section 8.2(c) of the Operating Agreement does not specially list punitive damages as damages MDG "may incur." But as stated by the ICA, "[t]he Operating Agreement does not

expressly limit the Arbitrator's authority with respect to the award and/or remedies it can issue." Navatek, 2025 WL 2157693, at *1 n.4.

HRS § 658A-21(a) does not require arbitrators to award punitive damages, but it grants them discretion to do so. Accordingly, the Arbitrator did not exceed his authority under HRS § 658A-23(a)(4).

Kao also contends the Arbitrator lacked a factual basis to award punitive damages under HRS § 658A-21(e), given the lack of evidence regarding his net worth. This argument also lacks merit. The Arbitrator did have evidence of Kao's net worth from his financial statements.

In any event, in reviewing an arbitration award, a court lacks authority to correct an arbitrator's findings, even if clearly erroneous, or an arbitrator's conclusions of law, even if wrong. See Nordic, 136 Hawai'i at 42, 358 P.3d at 14 (citations omitted). A court's review is limited to whether statutory grounds for vacatur exist under HRS § 658A-23(a). Here, there was no ground for vacatur of the punitive damages award.

V. Conclusion

For these reasons, we affirm the ICA's August 29, 2025 judgment on appeal, subject to the analysis in this opinion, and

remand to the circuit court for further proceedings consistent with the ICA's SDO and judgment on appeal.

Keith M. Kiuchi
for petitioner
Martin Kao

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

David M. Louie, Jessie
W. Schiel, Nicholas R.
Monlux, and Timothy T.
Silvester
for respondent
Navatek Capital Inc.

/s/ Lisa M. Ginoza

/s/ Brian A. Costa

/s/ Rebecca A. Copeland

