Case No. A-25-0429

BEFORE THE NEBRASKA COURT OF APPEALS

BIG IRON AUCTION COMPANY, a Nebraska corporation,

Plaintiff/Appellee,

v.

HARDER CAPITAL, LLC, a Nebraska limited liability company, and RYAN M. HARDER, an individual,

Defendants/Appellants.

Appeal from the District Court of Hall County, Nebraska
The Hon. Andrew C. Butler, District Court Judge

BRIEF OF APPELLEE BIG IRON AUCTION COMPANY

Prepared and Submitted by:

Keith A. Harvat - #21008
Justin D. Eichmann - #22405
Houghton Bradford Whitted PC LLO
6457 Frances Street, Suite 100
Omaha, Nebraska 68106
(402) 344-4000 Telephone
jeichmann@houghtonbradford.com

Jeffrey C. Jarecki, #24411
Jarecki Sharp & Petersen PC LLO
525 West State Street
Albion, Nebraska 68620
(402) 395-1010 Telephone
jeff@jlslawpc.com

Attorneys for Appellee Big Iron Auction Company

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Page

Cases (cont'd) Page

Statutes

Other Authorities

STATEMENT OF THE BASIS OF JURISDICTION

Appellants, Ryan M. Harder and Harder Capital, LLC (collectively, "Harder"), filed a Notice of Appeal (T307-09) on June 9, 2025 with the District Court of Hall County, Nebraska (the "District Court") seeking appeal of its May 28, 2025 Order on Motion to Assess Damages, Costs and Fees for Wrongful Injunction (T296-304). Pursuant to Neb.Ct.R.App.P. § 2-109(D)(1)(c) & (D)(2)(b), Appellee, Big Iron Auction Company ("Big Iron"), shows the Court as follows:

(i) On March 10, 2025, the District Court entered an order (T254-56) sustaining a Motion and Application to Confirm Arbitration Award (T228-30) filed by Harder seeking confirmation of a December 2, 2024 Arbitration Award (T214-27) (the "Award") entered by Timothy Engler, the parties' chosen arbitrator (the "Arbitrator"). On May 28, 2025, the District Court entered another order (T296-304) denying a Motion to Assess Damages, Costs and Fees for Wrongful Injunction (T208-10) filed by Harder seeking imposition of damages, costs and fees against Big Iron relative to the District Court's vacation of its prior temporary injunction.

(ii) No motion claiming to toll the time within which to appeal was filed.

(iii) Harder file a Notice of Appeal (T307-09) on June 9, 2025 and, pursuant to the District Court's accounting records, appears to have deposited the necessary docket fee on June 10, 2025.

(iv) Upon entry of the District Court's May 28, 2025 Order (T296-304), the only remaining unadjudicated issue is final disposition of Big Iron's $300,000.00 injunction bond which remains on deposit with the District Court clerk. No order of the District Court, statute, rule or case law authorizes an interlocutory appeal.

STATEMENT OF THE CASE

Pursuant to Neb.Ct.R.App.P. § 2-109(D)(1)(d) & (D)(2)(c), Big Iron shows the Court as follows:

(1) *The kind of action or nature of the case*. Big Iron's Complaint (T1-20) asserts claims against Harder for (1) breach of certain restrictive covenants, (2) injunctive relief regarding any future breach and (3) tortious interference in Big Iron's business relationships. Big Iron also filed a Motion for Temporary Restraining Order (T21-30) in furtherance of its second cause of action. Following submission of such claims, as well as a counterclaim asserted by Harder, Harder filed a motion on January 28, 2025 (T228-230) seeking confirmation of the Award, as well as a motion on December 6, 2024 (T208-210) seeking the District Court's imposition of damages, costs and fees against Big Iron as a result of the District Court's vacatur of the temporary injunction.

(2) *The issues actually tried in the court below*. On December 11, 2023, the District Court granted Big Iron's requested temporary injunction in part, requiring a bond from Big Iron in the amount of $300,000.00, and compelled the parties to submit their claims and defenses to binding arbitration (T119-125). On December 2, 2024, the Arbitrator issued the Award (T214-227) disposing of the parties' claims. On January 28, 2025, Harder filed a Motion and Application to Confirm Arbitration Award (T228-230) seeking confirmation of the Award and after the District Court vacated its prior temporary injunction, Harder also filed a Motion to Assess Damages, Costs, and Fees (T208-210) on December 6, 2024 seeking the District Court's award of additional damages relative to the recently vacated temporary injunction.

(3) *How the issues were decided and what judgment or decree was entered by the trial court*. The Award resolved the parties' various claims against each other by (1) determining that the subject restrictive covenants are unenforceable, (2) finding that certain sales

commissions should be released to Harder and (3) ordering Big Iron's payment of further sales commissions withheld from Harder (T224-226). Of note, the Award also determined that "[t]here are no other recoverable damages that could be awarded to Harder … based on the invalidation of the restrictive covenants" and that each party should be responsible for own fees and costs regardless of the outcome (T225-226). The District Court confirmed the Award in an Order entered on March 10, 2025 (T254-256) and denied Harder's request for further damages, costs and fees in its Order entered May 28, 2025 (T296-304).

(4) *The scope of appellate review*. Harder presents the present appeal as one made merely concerning a decision by the District Court relative to damages and fees recoverable upon vacating a prior injunctive order and argues that because such a determination is equitable, any appeal therefrom requires an appellate court to try "factual questions *de novo* on the record and, as to questions of both fact and law, … to reach a conclusion independent of the conclusion reached by the trial court." *See Koch v. Aupperle*, 277 Neb. 560, 562, 763 N.W.2d 415, 418 (2009), citing *Koch v. Aupperle*, 274 Neb. 52, 70, 737 N.W.2d 869, 882 (2007). In reality, however, Harder only reaches the issue of an equitable award of damages, fees and costs if the Award (which finds that Harder is not entitled to any such further damages, fees and costs) is first vacated by the District Court. In reviewing a district court's decision on a request to vacate, modify or confirm an arbitration award under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the "FAA"), this Court reaches its own conclusions independent of the District Court's rulings as to questions of law, but does not set aside the District Court's factual findings unless clearly erroneous. *Seldin v. Estate of Silverman*, 305 Neb. 185, 197, 939 N.W.2d 768, 781 (2020), citing *Ronald J. Palagi, P.C. v. Prospect Funding Holdings*, 302 Neb. 769, 925 N.W.2d 344 (2019).

PROPOSITIONS OF LAW

I.

> … at any time within one year after the award is made any party to the arbitration may apply to the court … for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.

9 U.S.C. § 9.

II.

> (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
>
> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10.

III.

> In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—
>
> (a) Where there 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.
>
> (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
>
> (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

9 U.S.C. § 11.

IV.

> On application for an order confirming the arbitration award, the court "must grant" the order "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title." There is nothing malleable about "must grant," which unequivocally tells courts to grant confirmation in all cases, except when one of the "prescribed" exceptions applies. This does not sound remotely like a provision meant to tell a court what to do just in case the parties say nothing else.

Hall St.Assocs., L.L.C. v. Mattel, Inc., 552 U.S. 576, 587, 170 L.Ed.2d 254, 128 S.Ct. 1396, 1405 (2008).

V.

> … convincing a court of an arbitrator's error—even his grave error—is not enough [to vacate an arbitration

> award]. So long as the arbitrator was "arguably construing" [the issues]—which this one was—a court may not correct his mistakes under [9 U.S.C.] § 10(a)(4). *Eastern Associated Coal* [*Corp. v. United Mine Workers of Am., Dist. 17*], 531 U.S.[57,] 62, [148 L.Ed.2d 354,]121 S.Ct. 462[, 466-67 (2000)] (internal quotation marks omitted). The potential for those mistakes is the price of agreeing to arbitration.

Oxford Health Plans LLC v. Sutter, 569 U.S. 564, 572-73, 186 L.Ed.2d 113, 133 S.Ct. 2064, 2070 (2013).

VI.

> Appellants have waived this argument, as they raised it for the first time in their brief to this court. When a party "who contests the merits of an arbitration award in court fails to first present the challenges on the merits to the arbitrators themselves, review is compressed still further, to nil."

Medicine Shoppe Int'l, Inc. v. Turner Invs., Inc., 614 F.3d 485, 489 (8th Cir. 2010), quoting *International Bhd. of Elec. Workers, Local Union No. 545 v. Hope Elec.Corp.*, 380 F.3d 1084 (8th Cir. 2004).

VII.

> … the standard for determining whether arbitrators exceeded their powers is governed by our decision in *City of Omaha v. Professional Firefighters Assn*. There, we stated that in deciding whether an arbitrator exceeded his or her powers, the focus is, appropriately, on whether the arbitrator acted within the bounds of contractual authority because it is the parties' agreement from which the arbitrator's power derives.

Department of Health & Hum. Servs. v. Nebraska Ass'n of Pub.Emps., 313 Neb. 259, 270, 984 N.W.2d 103, 111112 (2023), citing *City of Omaha v. Pro. Firefighters Ass'n of Omaha, Loc. 385, AFL-CIO*, 309 Neb. 918, 963 N.W.2d 1 (2021).

VIII.

> In determining whether an arbitrator has exceeded his authority, the agreement must be broadly construed with all doubts being resolved in favor of the arbitrator's authority.

United Food & Com. Workers, AFL-CIO, CLC, Loc. No. 88 v. Shop 'N Save Warehouse Foods, Inc., 113 F.3d 893, 895 (8th Cir. 1997), citing *United Food & Commercial Workers Int'l Union v. John Morrell & Co.*, 500 U.S. 905, 114 L.Ed.2d 78, 111 S.Ct. 1683 (1991).

STATEMENT OF FACTS

The underlying factual scenario confronted by the District Court below, and as presented by the parties at Arbitration, was outlined in the Award as follows:

- Between 2009 and 2023, Big Iron engaged Harder as an independent sales representative ("ISR") authorized to represent Big Iron's brand services and products in exchange for commissions earned on auction sales arranged by Harder on Big Iron's online auction platform.
- During Harder's engagement as an ISR for Big Iron, the parties entered into successive ISR agreements, the most recent of which was entered into on April 13, 2023 (the "ISR Agreement") which contains certain restrictive covenants effective upon the parties' termination of the ISR Agreement (the "Restrictive Covenants") as follows:

> For a period of two (2) years immediately following termination of this [ISR] Agreement (whether voluntary or involuntary, for any or reason), [Harder] will not seek or accept employment with, and will not call on or solicit the business of, sell to, or service (directly or indirectly, on [Harder's] own behalf or in association with any other individual or entity), any of [Big Iron]'s customers, sellers or purchasers with whom [Harder] did business and had personal contact with while contracted by [Big Iron], except to the extent such activities are unrelated to, or not competitive with the business, products and/or services that [Harder] offered, provided or supervised on behalf of [Big Iron] and cannot adversely affect [Big Iron]'s relationship or volume of business with such customers, sellers or purchasers.

- On Monday, October 23, 2023, Harder contacted Big Iron and terminated his engagement as an ISR on behalf of Big Iron.

(T215-16).

On November 6, 2023, Big Iron filed a Complaint (T1-20) (the "Complaint") against Harder with the District Court asserting Harder's violation of the Restrictive Covenants (T6-7 at ¶¶15-20). The Complaint includes three separate causes of action for: breach of contract (T9-10 at ¶¶30-39); injunctive relief (T11-12 at ¶¶40-48); and tortious interference (T12-13 at ¶¶49-55). Big Iron also filed a motion on November 13, 2023 requesting the District Court's entry of temporary injunctive relief to preclude Harder from further breach of the Restrictive Covenants (T21-30). Shortly before the November 30, 2024 hearing on the injunction motion, Harder filed a Motion to Dismiss and to Compel Arbitration (T92-94) asserting unenforceability of the Restrictive Covenants and alternatively seeking the matter's

referral to arbitration pursuant to the following binding arbitration clause in the ISR Agreement:

> The parties recognize that differences may arise between [Big Iron] and ISR and enter into a mutual agreement to arbitrate claims. Except as provided in this Agreement, the Federal Arbitration Act shall govern the interpretation, enforcement and all proceedings pursuant to this Agreement. ... The parties mutually consent to the resolution by arbitration of all claims or controversies ("claims"), past, present or future, whether or not arising out of the [ISR A]greement (or its termination), that [Big Iron] may have against ISR or that ISR may have against any of the following (1) [Big Iron], (2) its officers, directors, employees, or agents in their capacity as such or otherwise, (3) [Big Iron]'s parent, subsidiary and affiliated entities, and/or (4) all successors and assigns of any of them.
>
> The only claims that are arbitral are those that, in the absence of [the ISR] Agreement, would have been eligible for court action under applicable state or federal law.
>
> Claims not covered are: (1) claims by [Big Iron] or by ISR for temporary or permanent restraining orders or preliminary or permanent injunctions ("equitable relief") in cases in which such equitable relief would be otherwise authorized by law and any relief by [Big Iron] for claims related to claims under paragraphs 6, 7, 8, 9, or 11 of this Agreement. ...
>
> …
>
> The Arbitrator shall be mutually selected by the parties and shall generally be an attorney who is experienced in

> contractor matters and/or arbitration matters, (the "Arbitrator"). …
>
> … The arbitration shall be final and binding upon the parties, except as provided in this Agreement. …
>
> …
>
> Each party shall be responsible for their own costs and attorney's fees. The parties shall equally split the fees and costs of the Arbitrator. However, the Arbitrator shall have the authority to award the Arbitrator costs against the non-prevailing party. If any party prevails on a statutory claim which affords the prevailing party attorneys' fees and costs, the Arbitrator may award reasonable attorneys' fees and/or costs to the prevailing party, applying the same standards a court would apply under the law applicable to the claim(s).

(T19-20 at ¶16).

Following its initial hearing on the parties' various motions, the District Court entered an order on December 1, 2023 (T95-98) continuing the hearing to December 6, 2023, but in the meantime "temporarily restrain[ing] and enjoin[ing Harder] from any further and future solicitation of the business of, sale to, or service of, whether directly or indirectly, any of [Big Iron]'s customers, sellers or purchasers with whom [Harder] did business and had personal contact while contracted by [Big Iron] as an" ISR, but allowing any "lots presently listed for auction by [Harder] on the AuctionTime.com [platform to] remain so listed" (T96-97). After further hearing, the District Court entered an order (T119-25) denying Harder's motion to dismiss, granting Harder's request to compel arbitration and entering temporary injunctive relief with respect to the Restrictive Covenants. With respect to arbitration, the District Court ordered as follows:

> [Harder's] Motion to Compel Arbitration should be and is hereby granted in part. Pursuant to their agreement to arbitrate found in paragraph 16 of the [ISR] Agreement, the parties are hereby ordered to submit each of their claims and defenses, other than Plaintiff's claim for injunctive relief which is addressed below, to arbitration pursuant to the terms and conditions of said paragraph 16. The Court expects such arbitration to include "any dispute relating to the interpretation, applicability, enforceability or formation of [the ISR Agreement], including but not limited to any claim that all or any part of [such] Agreement is void or voidable."

(T121). As temporary injunctive relief, the District Court ordered as follows:

> [Big Iron]'s Motion for Temporary Injunction should be and is hereby granted in part. ...
>
> The temporary injunction granted by the Court herein will preclude [Harder] from any further and future violation of the [R]estrictive [C]ovenants found within the [ISR] Agreement and specifically from any solicitation of the business of, sale to, or service of, whether directly or indirectly, any of [Big Iron]'s customers, sellers or purchasers with whom [Harder] did business and had personal contact while contracted by [Big Iron]. To prevent any injury to a third party, the Court's temporary injunction will include an exception for those auction listings which [Harder] currently ha[s] posted on the AuctionTime platform. The auction of such listings may occur as listed, but upon conclusion thereof, all proceeds payable to [Harder] with respect to such auction(s) shall be deposited into and held in the trust account of [Harder's] counsel until further order of the Court. The

> undertaking required by Neb.Rev.Stat. § 25-1067 for entry of the requested temporary injunction shall be in the amount of $300,000.00.

(T123-23). On December 19, 2023, Big Iron deposited $300,000.00 with the District Court clerk representing the undertaking ordered by the District Court (T133).

As a part of submitting their claims and defenses to arbitration, Harder submitted a counterclaim asserting a single claim against Big Iron for breach of the ISR Agreement as a result of a "glitch" experienced on Big Iron's online auction platform "which negatively affected [Harder]'s earned commissions" and for "failing to pay [Harder for] earned commissions after the [ISR] Agreement was terminated."

Following a three-day evidentiary hearing in October 2024, the Arbitrator issued the Award invalidating the Restrictive Covenants and disposing of Big Iron's claims as follows:

> As a starting point, the threshold issue to address is the question of whether the restrictive covenants contained in the ISR Agreement are enforceable. …
>
> The restrictive covenant in this case is not enforceable for two reasons. One, the time restraints for the restrictive covenant is too long. Two years is overly broad for the restrictive covenant to be in place and goes beyond what is necessary to protect the goodwill and investment of Big Iron. …
>
> The second basis upon which the restrictive covenant is unenforceable is the breadth of who is prohibited from being contacted in the non-solicitation of service. While restricting the ISR from contacting and soliciting "sellers" with whom the ISR had contact is appropriate and reasonable, the restriction with regard to including "buyers/purchasers" is too broad. …

(T221-22).

> There is no other relief as to the restrictive covenants other than to find they are unenforceable.

(T223). The Award also resolved Harder's counterclaim as follows:

> There is also no need for any extensive discussion of the "glitch." The question of whether the glitch was a material breach of the agreement excusing the enforceability of the [restrictive] covenants is no longer an issue. In addition, the parties and witnesses who testified about the glitch confirmed there was no way to determine what damages would be attributable to the glitch without engaging in pure speculation.
>
> …
>
> As to damages, the funds currently in trust should be paid to [Harder]. These funds represent commissions from sales that were allegedly in violation of the restrictive covenants, but since the covenants are not enforceable, the commissions should go to Harder. The only other damages are the commissions that were made on sales that occurred while Harder was still an ISR, but were not paid because of the alleged breach of the restrictive covenants. These amounts are set forth in Interrogatory Answer No. 9 (Exhibit 120): $19,405.91 ...

(T224-25). The Arbitrator then specifically addressed any other damages available to Harder based upon his invalidation of the Restrictive Covenants

> There are no other recoverable damages that could be awarded to [Harder] based on the invalidation of the restrictive covenants. Measuring those damages would be too speculative. Obviously, [Harder's historical] 1099s are not a basis for calculating damages because those

> numbers represent gross revenue not net revenue. In essence, Harder's status would be equivalent to starting a new business. Awarding damages for a startup business are very speculative and have generally not been allowed by the Nebraska Supreme Court.

(T225 (citations omitted)). Finally, the Arbitrator also specifically addressed any claim for fees and expenses as follows:

> Finally, each party should be responsible for their share of the fees and expenses of arbitration. While [Harder] is a prevailing party on the enforceability of the restrictive covenants, there are aspects of the dispute in which Big Iron was a prevailing party, in particular any potential damages for the "glitch." I also think this ruling is consistent with Nebraska law where parties generally are required to pay their own fees and expenses regardless of the outcome.

(T225-26).

On December 6, 2024 and premised upon the Award's invalidation of the Restrictive Covenants, Harder filed an *ex parte* motion seeking vacation of the temporary injunction (T207-09). The District Court entered an order that same day vacating the temporary injunction (T213-15). At that time, Harder also filed two additional motions – the first seeking the imposition of damages, costs and fees against Big Iron " to compensate [Harder] for being wrongfully enjoined in this action at the request of" Big Iron (T210-12) and a second seeking to confirmation of the Award and an order "reduc[ing] the [A]ward to a final, enforceable judgment" (T230-32).

On March 10, 2025, the District Court entered an order granting Harder's application to confirm the Arbitration Award and entered judgment consistent therewith (T256-58). On May 28, 2025, the District Court entered an order denying Harder's request to assess

damages, costs and fees against Big Iron for wrongful injunction (T298-305). The District Court determined in relevant part as follows:

> At no point in time [has Harder] sought an order from the [District] Court vacating and/or modifying the Award or any portion of the Award. Instead, [Harder] sought and w[as] granted confirmation of the Award.
>
> ...
>
> In the present case, the Arbiter made findings as to damages, fees, and costs. The Award is clear on its face as to what the Arbiter found and decided. Here, the Arbiter clearly stated that "**[t]here are no other recoverable damages that could be awarded to [Harder] <u>based on the invalidation of the restrictive covenants</u> ... [and] ... each party should be responsible for their share of the fees and expenses of arbitration**." (Award, p. 11-13). (emphasis added). The language used by the Arbiter is broad and preclusive. The language used by the Arbiter does not appear to limit the damages as [Harder] suggest[s]. Indeed, a plain reading of this language shows the damages includes all forms of damages resulting from the invalid attempt to enforce the [Restrictive C]ovenant[s], including this court's temporary injunction. This ruling directly speaks to the relief [Harder] now seek[s]. Although [Harder] assert[s] that damages for wrongful injunction were not before the arbitrator, this language demonstrates that the Arbiter made finding regarding the harm stemming from the enforcement of the invalid restrictive covenant. Even if [Harder is] correct that the Arbiter's finding was outside the scope of the ISR Agreement's arbitration clause or that damages were not squarely before the Arbiter, [Harder] should have sought

to modify or vacate this portion of the Award, because the language of the Award demonstrates the Arbiter made findings related to those damages.

Instead, [Big Iron] and [Harder] approved the confirmation of the Award, and [Harder] did not file any motion to vacate, modify, or alter the Award. Indeed, the proper procedure to challenge this aspect of the Award would have been to file a motion to vacate or modify under Neb.Rev.Stat. §§ 25-2613 or 25-2614. Therefore, if there was an issue with the Award and the findings the Arbiter made as to damages, the proper course of action would have been to raise that issue directly with the Arbiter immediately after the Award was entered and, absent amendment by the Arbiter, then file an application to vacate or modify the Award with this Court concerning such error - all as required by the [Nebraska Uniform Arbitration Act] and FAA. In the present case, [Harder] failed to do either, instead requesting and obtaining the Award's confirmation which the Court was required to confirm given there was no pending motion to vacate or modify the Award.

...

The Court finds because the issues of damages, fees, costs, and expenses were all decided by the Arbiter in the Award, which has now been confirmed at the request of and without objection to by [Harder], any additional assessment of damages and fees by the Court would be tantamount to a vacatur or modification of the Award contrary to the provisions of the Nebraska UAA and FAA. See §§ 25-2613 or 25-2614; 9 U.S.C. §§ 10-11. Here, the Arbiter made findings as to damages relating to the unenforceability of the restrictive covenant and stated

> that each party is responsible for their share of fees and costs. The Court finds that these damages are the same damages that [Harder is] now seeking from this Court. Had [Harder] believed the Arbiter lacked authority to consider the injunction's effects, or failed to consider them, as already stated [Harder's] remedy would have been to move to vacate or modify the Award. Because the Arbiter already made findings as to damages and the Award was confirmed, the Court is not going to also award damages concerning this same matter.

(T300-02).

The District Court's May 28, 2025 Order also provides as follows concerning disposition of Big Iron's $300,000.00 undertaking deposited with the District Court clerk:

> … The District Court Clerk's Office, pursuant and consistent with this Order, the Arbiter's Final Decision and Order filed December 6, 2024, and the Court's March 10, 2025 Order, is to enter a judgment in favor of [Harder] in the amount of $19,405.91 and against [Big Iron]. The District Court Clerk's Office will continue to hold the bond proceeds of $300,000.00 until the appeal time has run or further order of the Court. If the appeal time runs without an appeal, the District Court Clerk is directed to distribute $19,405.91 and any accrued interest from filing of the order until the date the appeal time runs to [Harder]. The remaining balance of the $300,000.00 bond is to be distributed back to [Big Iron]. The parties are responsible for their own attorney fees and costs in this action. Please govern yourselves accordingly.

(T302-03). Harder filed a Notice of Appeal on June 9, 2025 (T307-09) and the District Court has not made further disposition with respect to

Big Iron's $300,000.00 bond which remains on deposit with the District Court clerk.

ARGUMENT

I. Failure to Address Perceived Errors in the Award to Both the Arbitrator and the District Court Which Harder Now Challenges on Appeal.

The gist of Harder's argument on appeal is that the Award's determination that Harder lacked additional damages awardable as a result of the invalidation of the Restrictive Covenants was in error because either (1) that issue was reserved and not submitted to arbitration and/or (1) that issue was not yet ripe for determination. Assuming these two complaints to be true, Harder was required to address these complaints in a specific manner – by seeking the Arbitrator's reconsideration of the issue and, if unsuccessful, by asking the District Court to vacate or modify the Award accordingly. Harder, however, did neither. Instead, Harder opted to rely upon and utilize the Award to obtain vacatur of the temporary injunction and then ask the District Court to confirm the Award, indicating directly to the Court that "[w]e're very happy with [the Award] and we're not trying to vacate or attack it, impeach it, discredit it in any way." Harder's present appeal contradicts all of this.

The parties' ISR Agreement requires binding arbitration of their disputes pursuant to the FAA, for any of the following claims:

> … all claims or controversies ("claims"), past, present or future, whether or not arising out of the [ISR A]greement (or its termination), that [Big Iron] may have against [Harder] or that [Harder] may have against … [Big Iron] … Claims not covered are … any relief by [Big Iron] for

> claims related to … paragraph[ ]11[1] of this [ISR] Agreement. …

(T19 at ¶16). Other than Big Iron's initial claim for injunctive relief relative to the Restrictive Covenants (addressed directly to the District Court), all other claims between the parties (to include any potential claim for damages in the face of wrongful injunction) are subject to binding arbitration by the ISR Agreement. The District Court sustained Harder's request to compel binding arbitration clause as follows:

> Pursuant to their agreement to arbitrate found in paragraph 16 of the [ISR] Agreement, the parties are hereby ordered to submit each of their claims and defenses, other than Plaintiff's claim for injunctive relief which is addressed below, to arbitration pursuant to the terms and conditions of said paragraph 16. The Court expects such arbitration to include "any dispute relating to the interpretation, applicability, enforceability or formation of [the ISR agreement] …

(T120 at ¶2). Again, other than Big Iron's initial claim for injunctive relief relative to the Restrictive Covenants (addressed directly to the District Court, all other claims between the parties (to include any potential claim for damages in the face of wrongful injunction) were compelled to binding arbitration by the District Court.

The parties conducted an arbitration of their claims and defenses before the Arbitrator over the course of three days in October 2024. Other than the act of entering or dissolving a temporary injunction – acts reserved to the District Court both by the ISR Agreement and the District Court's order – the Award resolved each of the parties' remaining claims and defenses by (1) denying Big Iron any

---

[1] Paragraph 11 of the ISR Agreement contains the Restrictive Covenants.

relief after determining that the Restrictive Covenants were unenforceable, (2) denying Harder any relief relative to the claimed "glitch," and (3) awarding Harder certain withheld sales commissions. Additionally, after hearing all of the parties' evidence, to include the long history of their mutual transactions and the details of Harder's prior and continuing business operations, the Arbitrator made two additional relevant findings – first, "[t]here are no other recoverable damages that could be awarded to [Harder] based on the invalidation of the restrictive covenants," and second, requiring that "each party … be responsible for their share of the fees and expenses" as both Big Iron and Harder were considered "prevailing" parties on different aspects of the dispute and that refusing to apportion fees and expenses "is consistent with Nebraska Law" (T224-26).

Though Harder now claims entitlement to additional damages, fees and costs as a result of the recently vacated temporary injunction (the exact same damages which the Arbitrator determined were not appropriate under the circumstances), Harder failed to seek vacatur or modification of the Award in any manner. Instead of challenging the Award, Harder used it as justification for seeking vacatur of the temporary injunction (T205-07) and sought the District Court's confirmation of the Award in its entirety (T228-30; T254-56). In its arguments directed to the District Court on these issues, Harder's counsel reiterated that his clients were happy with <u>all</u> portions of the Award and were not requesting that any portion thereof be vacated or modified.

> THE COURT: So, yeah, I guess it's back to you, Mr. Krejci. If you want the Court to confirm the arbitration award, don't you have to accept all of that order?
>
> MR. KREJCI: I accept all of it, Your Honor, …

(Bill of Exceptions, Vol. I at 160:10-15).

> MR. KRECJI: Okay. Let me be 100 percent clear, Your Honor. We are not trying to vacate the arbitration decision in any way. We're very happy with it and we're not trying to vacate or attack it, impeach it, discredit it in any way.

(Bill of Exceptions, Vol. I at 171:1-6).

The District Court found the Award's to be clear, direct and unequivocal in its findings regarding "all forms of damages [available to Harder] resulting from the invalid attempt to enforce the covenant, including this court's temporary injunction:"

> In the present case, the Arbiter made findings as to damages, fees, and costs. The Award is clear on its face as to what the Arbiter found and decided. Here, the Arbiter clearly stated that **"[t]here are no other recoverable damages that could be awarded to Harder Capital or Ryan Harder based on the invalidation of the restrictive covenants … [and] … each party should be responsible for their share of the fees and expenses of arbitration."** (Award, p. 11-13). (emphasis added). The language used by the Arbiter is broad and preclusive. The language used by the Arbiter does not appear to limit the damages as Defendants suggest. Indeed, a plain reading of this language shows the damages includes all forms of damages resulting from the invalid attempt to enforce the covenant, including this court's temporary injunction. This ruling directly speaks to the relief Defendants now seek. Although Defendants assert that damages for wrongful injunction were not before the arbitrator, this language demonstrates that the Arbiter made findings regarding the harm stemming from the enforcement of the invalid restrictive covenant. Even if Defendants are

> correct that the Arbiter's finding was outside the scope of the ISR Agreement's arbitration clause or that damages were not squarely before the Arbiter, Defendants should have sought to modify or vacate this portion of the Award, because the language of the Award demonstrates the Arbiter made findings related to those damages.

(T300-01 (**emphasis in original**)).

Because the District Court relied upon the Award's clear and unequivocal findings to deny Harder the additional relief sought for wrongful injunction, Harder's argument on appeal is for the most part two-fold: (1) "the arbiter had no authority over equitable claims and issues pertaining to temporary injunctions" and/or (2) the issue of such damages "was not ripe at the time of the arbitration proceeding." *See* Brief of Appellants at p. 23. That argument, however, fails to consider the appropriate method of challenging such putative overreach by the Arbitrator and Harder's failure to undertake same.

a. Judicial Review of and Vacating or Modifying an Arbitration Award.

In the face of the Arbitrator's preclusive determination that "there [exist] no other recoverable damages that could be awarded to [Harder] based on the invalidation of the restrictive covenants," there exists a prescribed method of addressing any perceived overreach in that determination. Though judicial review of an arbitration award is limited, the FAA authorizes a district court to vacate or modify an arbitration award under the limited and specified circumstances outlined in 9 U.S.C. §§ 10 and 11. Vacatur of an arbitration award under 9 U.S.C. § 10 may be had upon (1) a party's application and (2) sufficient proof of one of the following circumstances:

> (1) The award was procured by corruption, fraud, or undue means;

(2) There was evident partiality or corruption in the arbitrators, or either of them;
(3) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
(4) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a). On the other hand, modification of an arbitration award under 9 U.S.C. § 11 may be had upon (1) a party's application and (2) sufficient proof of one of the following circumstances:

(a) There 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.
(b) The arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
(c) The award is imperfect in matter of form not affecting the merits of the controversy in which circumstance the order may modify and correct the award so as to effect the intent thereof and promote justice between the parties.

9 U.S.C. § 11. Harder's argument falls into two of the foregoing – vacatur for exceeding the scope of authority pursuant to 9 U.S.C. § 10(a)(4) and modification of the award to excise a matter not submitted pursuant to 9 U.S.C. § 11(b).

Despite now expressing their objections to the Arbitrator's overreach, Harder failed to apply for vacatur or modification of the Award on either of these two bases, instead representing to the District Court that it was not seeking vacatur or modification and proceeding to seek the Award's confirmation. Even if Harder had a

change of heart and now desires vacatur or modification of the Award, the timeframe for such a request is long past. *See* 9 U.S.C. § 12 ("Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered.")

b. Requisite Confirmation of the Award in the Absence of a Request to Vacate or Modify; Prerequisite Request to Reconsider.

When asked to confirm an arbitration award, just as Harder requested of the District Court, the FAA requires the a court to confirm an award "unless the award is vacated, modified, or corrected as prescribed in [9 U.S.C. §§] 10 and 11." 9 U.S.C. § 9. Because no party asked the District Court to either vacate or modify the Award, the United States Supreme Court has made clear that the District Court was without any choice or discretion other than confirming the Award when requested to do so by Harder.

> On application for an order confirming the arbitration award, the court "must grant" the order "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title." There is nothing malleable about "must grant," which unequivocally tells courts to grant confirmation in all cases, except when one of the "prescribed" exceptions applies.

Hall Street Associates, L.L C. v. Mattel, Inc., 552 U.S. 576, 587, 170 L.Ed.2d 254, 128 S.Ct. 1396, 1405 (2008).

The mandatory nature of confirmation outlined by the U.S. Supreme Court above even extends to scenarios in which the District Court would have made a different decision given the same set of facts. *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 572, 186 L.Ed.2d 113, 133 S.Ct. 2064, 2070 (2013) ("[C]onvincing a court of an arbitrator's error—even his grave error—is not enough. ... The

potential for those mistakes is the price of agreeing to arbitration."). *See, also, Industrial Steel Constr., Inc. v. Lunda Constr.Co.*, 33 F.4th 1038, 1041 (8th Cir. 2022) ("Because the parties bargained for the arbitrator's construction of their agreement, an arbitral decision even arguably construing or applying the contract must stand, regardless of a court's view of its (de)merits ... the sole question for the [district] court is whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong."), citing *Beumer Corp. v. ProEnergy Servs., LLC*, 899 F.3d 564 (8th Cir. 2018); *Oxford Health*, supra. "An arbitrator does not 'exceed his powers' by making an error of law or fact, even a serious one." *Beumer Corp.*, *supra.* at 565.

Of further significance, to obtain the District Court's vacatur of modification to the Award, Harder must first have sought such vacatur or modification directly from the Arbitrator. If a party who "contests the merits of an arbitration award in court fails to first present the challenges on the merits to the arbitrators themselves, review is compressed still further, to nil." *Medicine Shoppe Int'l, Inc. v. Turner Invs., Inc.*, 614 F.3d 485, 489 (8th Cir. 2010), citing *International Bhd. of Elec. Workers, Local Union No. 545 v. Hope Elec.Corp.*, 380 F.3d 1084 (8th Cir. 2004).

> … a party cannot … fail in arbitration to raise a particular argument concerning the merits … and later seek judicial resolution of that same issue.

Hope Elec., *supra.* at 1101. In the failure to raise any of their objections directly with the Arbitrator and seek his reconsideration of the Award, Harder is foreclosed from any opportunity to ask the District Court or this Court to entertain their objections now.

Without a motion filed to either vacate or modify the Award, in the face of Harder's contradictory request to confirm the Award, and because Harder failed to address any of their objections directly with the Arbitrator, the District Court was left without discretion to do

anything other than confirm the Award and bind each of the parties to the determinations made therein by the Arbitrator – even those determinations which Harder now seeks to invalidate as overreach. Because the Arbitrator determined further damages, fees and expenses to be inappropriate under the circumstances, the District Court correctly determined that any additional assessment of such damages and fees would have been tantamount to a vacatur or modification of the Award – all contrary to the mandatory provisions of the FAA and case law outlined above. The parties bargained for arbitration in the ISR Agreement and they don't get to relitigate any of their claims before the District Court. Had Harder believed any portion of the Award to be wrong or inappropriate, Harder was required to make that argument first to the Arbitrator directly and then to the District Court by appropriate motion. Harder undertook neither.

c. Inapplicability of Harder's Argued Preclusion Analysis.

In the Brief of Appellants, Harder attempts to frame the argument in terms of claim and issue preclusion, arguing that the District Court was not bound by either relative to Harder's claim for additional damages such that the District Court should have simply ignored the Arbitrator's determination that no additional damages are available to Harder as a result of the Award's invalidation of the Restrictive Covenants (which resulted in vacatur of the temporary injunction). *See* Brief of Appellants at pp. 30-37. While Big Iron takes issue with the claim and issue preclusion analysis Harder provides in the Brief of Appellant, all as outlined in further detail below under Section II of this Brief of Appellee, Harder's argument is merely an attempt to bypass and ignore the more applicable analysis outlined in this section above. Though now arguing that the District Court was not bound by either issue or claim preclusion when considering a request for additional damages as a result of the Arbitrator's claimed overreach, these arguments were never presented to the District Court

in connection with a motion to vacate or modify the Award. Harder never made that motion and never challenged the preclusive effect of the Award. Instead, Harder opted to do the exact opposite and ask the District Court to confirm the Award in its entirety.

Once the Arbitrator determined that the Restrictive Covenants were unenforceable, he then considered the evidence presented as to damages awardable based on his invalidation of the Restrictive Covenants. In doing so, the Arbitrator considered the same evidence that was subsequently submitted to the District Court in support of Harder's request for additional damages. The Arbitrator determined that no such further damages, fees and costs were appropriate under the circumstances. With the Arbitrator's determination as clear as it could be, the District Court decided to rely on that determination to deny Harder's damages request rather than try the whole matter and rehear the same evidence.

> MR. EICHMANN: … The only other thing I'll tell you, Your Honor, is if the Court were to look at this and say, okay, well, I'm going to set aside those portions and I want to be the one who decides who pays fees and I want to the one who decides who has to be pay damages –
>
> THE COURT: Why I don't just hear the entire case, then, at that point?
>
> MR. EICHMANN: Yes, exactly. And number 2, you didn't hear the entire case. You didn't hear the two and a half days [of evidence at the Arbitration]. …
>
> And frankly, I guess my point is if the Court's intending on setting aside these portions of Mr. Engler's arbitration award, I think that rewinds us to having to have an evidentiary hearing in front of you on how the real issues ought to play out.

Bill of Exceptions, Vol. I at 166:17-168:7.

Frankly, why rehear the same evidence only to come to the exact same conclusion about damages when Harder expressed only satisfaction with the Award (Bill of Exceptions, Vol. I at 171:1-6 ("Let me be 100 percent clear, Your Honor. We are not trying to vacate the arbitration decision in any way. We're very happy with it and we're not trying to vacate or attack it, impeach it, discredit it in any way.").

To support this argument, Harder cites the Court to the holding of *Blumenthal v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 910 F.2d 1049 (2d Cir. 1990) which it claims is "eerily similar" to the present matter. *See* Brief of Appellant at p. 35. In *Blumenthal*, there was no issue of award confirmation versus vacatur, instead the Second Circuit refused a claim preclusion argument proffered to foreclose the issue a wrongful injunction damages, but did so in reliance upon both Fed.R.Civ.P. 65(c), which is without a Nebraska equivalent beyond Neb.Rev.Stat. § 25-1067, and the rules and policies of the New York Stock Exchange, which preclude the arbitration of damages for lost business as a result of the improper issuance of an injunction. *Blumenthal, supra.* at 1055-56. No such federal rule and/or NYSE rules and policies are at issue in the present matter.

Regardless of whether Harder's complaint (that the Arbitrator's determination constitutes an overreach, either as unauthorized or not submitted to arbitration) is meritorious, Harder failed to address that complaint in the requisite manner – by seeking the Arbitrator's reconsideration of the issue and, if unsuccessful, by asking the District Court to vacate or modify the Award accordingly. Instead of following the requisite procedure, Harder utilized the Award to obtain vacatur of the temporary injunction and then asked the District Court to confirm the Award, indicating complete satisfaction with the Award in its entirety. As a result, the District Court correctly refused Harder the further relief requested in the motion for wrongful injunction damages.

II. Submission of the Issue of Damage to Arbitration and the Arbitrator's Authority to Determine Damages.

Were the Court to see past Harder's failure to challenge the Award (and seek its confirmation) and consider whether the damages issue was submitted to arbitration or whether the Arbitrator was authorized to address the damages issue, Harder's appeal still fails. A review of both the ISR Agreement and the District Court's order, as well as the actual evidence presented, reveals that the issue was squarely and properly before the Arbitrator for determination.

Arbitration is a contractual issue and, thus, the questions of whether any particular issue is appropriately submitted to arbitration and whether an arbitrator exceeds his or her authority in determining an issue are both determined by a review of the bounds for arbitration outlined in the parties' arbitration clause.

> … the standard for determining whether arbitrators exceeded their powers is governed by our decision in *City of Omaha v. Professional Firefighters Assn.*[, 309 Neb. 918, 963 N.W.2d 1 (2021).] There, we stated that in deciding whether an arbitrator exceeded his or her powers, the focus is, appropriately, on whether the arbitrator acted within the bounds of contractual authority because it is the parties' agreement from which the arbitrator's power derives. A court's task is limited to deciding whether the arbitrator (even arguably) adhered to contract interpretation in his or her decision. [*Id.*]

Department of Health & Hum.Servs. v. Nebraska Ass'n of Pub.Emps., 313 Neb. 259, 270, 984 N.W.2d 103, 111-12 (2023).

> In determining whether an arbitrator has exceeded his authority, the agreement must be broadly construed with all doubts being resolved in favor of the arbitrator's authority.

United Food & Commercial Workers, Local No. 88 v. Shop 'N Save Warehouse Foods, Inc., 113 F.3d 893, 895 (8th Cir. 1997).

While Harder argues that the ISR Agreement reserved all equitable issues from submission to arbitration, the ISR Agreement's language is not as broad as Harder insists. Rather, for purposes of the present matter, the ISR Agreement precludes arbitration only for claims (1) made by Big Iron and (2) for relief upon the Restrictive Covenants (T19 at ¶16 ("Claims not covered are … any relief by [Big Iron] for claims related to claims under paragraph[] … 11 of this [ISR] Agreement.")). When the District Court ordered the parties to arbitration, its order confirmed the scope of submission to arbitration as follows:

> Pursuant to their agreement to arbitrate found in paragraph 16 of the [ISR] Agreement, the parties are hereby ordered to submit each of their claims and defenses, **other than [Big Iron]'s claim for injunctive relief which is addressed below**, to arbitration pursuant to the terms and conditions of said paragraph 16. The [District] Court expects such arbitration to include "any dispute relating to the interpretation, applicability, enforceability or formation of [the ISR agreement], including but not limited to any claim that all or any part of [such] Agreement is void or voidable."

(T96 at ¶2 (**emphasis added**)). The only claim for relief which the District Court exempted from arbitration ("[Big Iron]'s claim for injunctive relief which is addressed below") was also precluded from arbitration by the ISR Agreement – a claim (1) made by Big Iron (2) for relief related to the Restrictive Covenants. No other claims were precluded from arbitration.

Though Harder asserts that the ISR Agreement also precluded Harder's own damage claim from submission to arbitration, the Brief of Appellant does not indicate how such meets the ISR Agreement's

qualification as a claim for "relief by [Big Iron] … under paragraph[] … 11 of th[e ISR] Agreement." Even if Harder's damage claim is related to the Restrictive Covenants (through their invalidation by the Arbitrator), Harder's damage claim is certainly not one raised by Big Iron and is not precluded from arbitration by the ISR Agreement. It should be noted that the District Court also recognized the limitations on the ISR Agreements carveout from arbitration when it determined that Harder's defenses to the Restrictive Covenants were also to be determined in arbitration. (T96 at ¶2 ("The [District] Court expects such arbitration to include "any dispute relating to the interpretation, applicability, enforceability or formation of [the ISR agreement], including but not limited to any claim that all or any part of [such] Agreement is void or voidable."). Again, while Harder's various defenses are related to the Restrictive Covenants, they are not a claim for relief by Big Iron and are not precluded from arbitration. The only issue not subject to arbitration was Big Iron's "claim for injunctive relief" (which was resolved by the District Court in its December 11, 2023 order). Any claim by Harder as to the validity or enforceability of the Restrictive Covenants, or any damages asserted by Harder for being enjoined from violating them, were included in the referral to arbitration pursuant to the terms and conditions of the ISR Agreement.

Interestingly, in addition to arguing that the wrongful injunction claims was not subject to arbitration, Harder also asserts that the damages for wrongful injunction are different than any damages suffered as a result of the invalidation of the Restrictive Covenants. Though the Brief of Appellant cites hypothetically to such a difference, Harder does not identify any actual difference between wrongful injunction damages and damages based upon invalidation of the Restrictive Covenants in the present matter. *See* Brief of Appellants at pp. 29-30. Harder's argument is only hypothetical as no such distinction in this matter – the temporary injunction was only vacated because the Restrictive Covenants were invalidated in the

Award. In fact, Harder acknowledges this lack of distinction by admitting that "[a]s it turned out, the temporary injunction was vacated because the [R]estrictive [C]ovenants were invalid." *See* Brief of Appellants at p. 30.

To further illustrate the lack of distinction, the evidence which Harder submitted in support of the claim for wrongful injunction damages (Exhibit 14) was merely an extrapolation of evidence that was already presented for consideration by the Arbitrator in making his Award. As an example, Harder's various 1099s from his prior engagement with Big Iron were reviewed by the Arbitrator in making his award (T225 ("Obviously, the 1099s are not a basis for calculating damages …"). Those same 1099s were also attached to Harder's affidavit as evidence of income generated from his prior engagement with Big Iron (Bill of Exceptions, Vol. III at ¶6 ("My 1099 tax forms I received from Big Iron while I was an ISR are attached hereto."). Contrary to the Award's determination that "the 1099s are not a basis for calculating damages," Harder attempts to do exactly that before the District Court.

To make the request for wrongful injunction damages, Harder provides the District Court with the same evidence he previously submitted in the Arbitrator which the Award determined to be insufficient to justify any further award of damages, fees and costs relative to the invalidation of the Restrictive Covenants (which was the sole justification for vacatur of the temporary injunction). The Arbitrator had all the evidence and testimony necessary, as well as the authority, to appropriately find that "[t]here are no other recoverable damages that could be awarded to [Harder] based on the invalidation of the restrictive covenants."

For the reasons outlined above, the Court also need not consider Harder's argument concerning claim and issue preclusion. The matter is best summed up with the following exchange between counsel and the District Court:

> [MR. EICHMANN:] … Your Honor, from you when you asked this -- when you required this matter be mediated was that [the Arbitrator] be given all the authority he needs in order to determine this dispute, and I think he's done exactly what you asked.
>
> Now, again, respectfully, I don't agree with portions of it –
>
> THE COURT: Neither party agrees.
>
> MR. EICHMANN: -- but this is what I found, and I don't have a basis for overturning it.

(Bill of Exceptions, Vol. I at 163:24-164:8). The parties bargained for arbitration when they agreed to the ISR Agreement and, unless they can show that one of the extraordinary circumstances outlined in 9 U.S.C. §§ 10-11 exists, neither party gets to relitigate any of their claims before the District Court. The parties got what they bargained for whether they agree with the Arbitrator's determination or not. "The potential for … mistakes is the price of agreeing to arbitration." *Oxford Health*, 569 U.S. at 572, 133 S.Ct. at 2070.

CONCLUSION

For each of the above and foregoing reasons, Big Iron respectfully requests that the Court affirm the orders of the District Court below.

DATED this 23rd day of October, 2025.

BIG IRON AUCTION COMPANY, a Nebraska corporation, Appellee

Jeffrey C. Jarecki, #24411
Jarecki Sharp & Petersen P.C., L.L.O.
525 West State Street
Albion, Nebraska 68620
(402) 395-1010; (402) 395-1011 (Fax)
jeff@jlslawpc.com

and

By: s/Justin D. Eichmann

Keith A. Harvat - #21008
Justin D. Eichmann - #22405
Houghton Bradford Whitted PC, LLO
6457 Frances Street, Suite 100
Omaha, Nebraska 68106
(402) 344-4000 | (402) 930-1099 Fax
kharvat@houghtonbradford.com
jeichmann@houghtonbradford.com

Attorneys for Appellee

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing Brief of Appellee complies with the word count limitation of Neb.Ct.R.App.P. 2-103(C)(3) in that same, including all portions thereof excepting this certificate contains 9,921 words pursuant to the word count function of Microsoft Word for Microsoft 365, the word processing software used to prepare this brief.

The undersigned hereby further certifies that the foregoing Brief complies with the typeface requirements of Neb.Ct.R.App.P. § 2-103s(A)(4) in that same was prepared using 12-point Century Schoolbook font.

s/Justin D. Eichmann

4897-8470-0784, v. 2

Certificate of Service

I hereby certify that on Thursday, October 23, 2025 I provided a true and correct copy of this *Brief of Appe Big Iron Auction Co* to the following:

Harder Capital, LLC represented by Jared James Krejci (25785) service method: Electronic Service to **jkrejci@gilawfirm.com**

Ryan M Harder represented by Jared James Krejci (25785) service method: Electronic Service to **jkrejci@gilawfirm.com**

Signature: /s/ Justin Dale Eichmann (22405)