

CONCURRING OPINION OF ACOBA, J.,
WITH WHOM RAMIL, J., JOINS

I agree that arbitrators may be held to have exceeded their powers if they go beyond the boundaries of the arbitration agreement -- a matter we discern from the language of the arbitration agreement itself. See Wayland Lum Constr., Inc. v. Kaneshige, 90 Hawai'i 417, 422, 978 P.2d 855, 860 (1999) ("The scope of an arbitrator's authority is determined by the agreement." (Citing Clawson v. Habilitat, Inc., 71 Haw. 76, 78, 783 P.2d 1230, 1231 (1989); Mathewson v. Aloha Airlines, Inc., 82 Hawai'i 57, 75, 919 P.2d 969, 987 (1995).)).

Since the "Governing Law" provision controlled the construction of the Agreement and the mandatory arbitration clause was part of that agreement, see id. ("[A]n arbitration agreement should be construed as a whole, and its meaning determined from the entire context." (Citations omitted.)), arguably the arbitrators were bound to construe the agreement in accordance with the governing law specified in the governing law provision, see, e.g., Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52, 64 (1995) (stating that a general choice of law provision in an agreement accompanied by a separate arbitration clause should be read to incorporate into the agreement the "substantive principles that [the state court] would apply, but not . . . special rules limiting the authority of arbitrators" when the arbitration came within the Federal Arbitration Act); Osteen v. T.E. Cuttino Constr. Co., 434 S.E.2d 281, 284 (S.C. 1993) (holding that the governing law provision of

a contract, although separate from the arbitration agreement clause, "indicates the parties' agreement to have the validity and construction of the contract determined by arbitrators according to the substantive law").

However, assuming that that is the case, any error in the application of Hawai'i law by the arbitrators would be beyond our purview. See Mathewson, 82 Hawai'i at 70, 919 P.2d at 982 ("An arbitration award, if made in good faith, is conclusive upon the parties, and . . . neither of them can be permitted to prove that the arbitrators decided wrong either as to the law or the facts of the case.'" (Quoting Board of Directors of Ass'n of Apartment Owners of Tropicana Manor v. Jeffers, 73 Haw. 201, 214, 830 P.2d 503, 511 (1992) (citations omitted).)). It is not evident from the facts that the arbitrators expressly chose to disregard Hawai'i law, so as to constitute "misbehavior[,]" Hawai'i Revised Statutes (HRS) § 658-9(3) (1993), or to indicate that the arbitrators "so imperfectly executed [their powers], that a mutual, final, and definite award, upon the subject matter submitted, was not made[,]" HRS § 658-9(4).

For the foregoing reasons, I concur in the result.