[Cite as *NCO Portfolio Mgt., Inc. v. Reese*, 2009-Ohio-4201.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92804

NCO PORTFOLIO MANAGEMENT, INC.

PLAINTIFF-APPELLANT

vs.

ESTHER R. REESE

DEFENDANT-APPELLEE

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-654956

BEFORE: Kilbane, J., Gallagher, P.J., and Blackmon, J.

RELEASED: August 20, 2009

JOURNALIZED:

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MARY EILEEN KILBANE, J.:

{¶ 1} Appellant, NCO Portfolio Management, Inc. (NCO), appeals the denial of its application to confirm an arbitration award. After a review of the facts and pertinent law, we reverse and remand.

{¶ 2} Appellee, Esther Reese (Reese), entered into a credit card agreement with MBNA America Bank. The account was then assigned to NCO. Reese utilized the card, however, she failed to make the required payments. The account had an outstanding balance of $3,132.18 at the time Reese stopped making payments.

{¶ 3} When Reese entered the cardholder agreement, she agreed to arbitrate all disputes. In conformity with this agreement, NCO filed a dispute with the National Arbitration Forum. Although Reese was served with notice of the arbitration hearing, she did not attend. On August 14, 2007, the arbitrator determined Reese was properly notified of the hearing, the parties had entered into a valid arbitration clause, and NCO was entitled to recover the amount of $3,132.18 from Reese.

{¶ 4} On March 26, 2008, NCO filed a motion and application to confirm and enforce its arbitration award. As required by R.C. 2711.14, the application also contained a brief in support, the cardholder agreement outlining the arbitration provisions, and the arbitrator's decision.

{¶ 5} On July 9, 2008, a case management conference was held. Reese

again failed to appear. On October 1, 2008, NCO filed a request for a ruling on its previously submitted application to confirm the arbitration award. On January 28, 2009, the trial court issued a journal entry denying NCO's application without opinion.

{¶ 6} On February 12, 2009, NCO filed the instant appeal, asserting one assignment of error for our review.

> **"The trial court prejudicially erred and abused its discretion by denying appellant's application to confirm arbitration award."**

{¶ 7} NCO argues that the court had no discretion to deny its application. For the following reasons, we agree.

{¶ 8} NCO filed its application to confirm the arbitration award with the trial court pursuant to R.C. 2711.09, which provides:

> **"At any time within one year after an award in an arbitration proceeding is made, any party to the arbitration may apply to the court of common pleas for an order confirming the award. Thereupon the court shall grant such an order and enter judgment thereon, unless the award is vacated, modified, or corrected as prescribed in sections 2711.10 and 2711.11 of the Revised Code."**

{¶ 9} Pursuant to R.C. 2711.13, if a party is not satisfied with the arbitration award, they may file a motion to modify, vacate, or correct the award within three months after they receive the award. The motion must be based on one of the circumstances outlined in R.C. 2711.10 and R.C.

2711.11. *Gallon v. Am. Fedn. of State, Cty., & Mun. Emp., Ohio Council 8, AFL-CIO, Local 2243,* 71 Ohio St.3d 620, 622, 1995-Ohio-197. Once the party fails to file the appropriate motion within the three-month period, the trial court is precluded from modifying or vacating the award. *FIA Card Services, N.A. v. Wey*, Cuyahoga App. No. 90072, 2008-Ohio-2353, at ¶7, citing *City of Galion*, supra.

{¶ 10} When a party files an application to confirm an arbitration award, said application must be granted by the trial court, unless there has been a timely motion to modify, vacate, or correct the award. *Warren Edn. Assn. v. Warren City Bd. of Edn.* (1985), 18 Ohio St.3d 170, 480 N.E.2d 456. This court has previously held that the jurisdiction of courts in matters regarding arbitration is extremely limited. *Schiffman v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, Cuyahoga App. No. 86723, 2006-Ohio-2473, at ¶22, citing *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.* (1990), 49 Ohio St.3d 129, 551 N.E.2d 186. The only instances in which the court should disturb an arbitration award are those that are specifically prescribed by R.C. 2711.10 and R.C. 2711.11. *Schiffman*, supra, citing *Cuyahoga Community College v. Dist. 925, Serv. Emp. Internatl. Union AFL-CIO* (1988), 42 Ohio App.3d 166, 170, 537 N.E.2d 717.

{¶ 11} In the instant case, NCO filed the application to confirm the

arbitration award well within the one-year statutorily prescribed period. Reese never filed a motion to vacate the award. Reese did not appear at the arbitration hearing or the case management conference held by the trial court. NCO attached all required exhibits to its application, and therefore, the trial court was required to confirm the arbitration award.

{¶ 12} Accordingly, this assignment of error is sustained, and the case is reversed and remanded for proceedings consistent with this opinion.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

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

MARY EILEEN KILBANE, JUDGE

SEAN C. GALLAGHER, P.J., and
PATRICIA A. BLACKMON, J., CONCUR