

IN THE COURT OF APPEALS OF IOWA

No. 8-456 / 07-1631
Filed July 30, 2008

**FIA CARD SERVICES N.A. f/k/a
MBNA AMERICAN BANK N.A.,**
Plaintiff-Appellant,

vs.

RAYMOND A. HELMER,
Defendant-Appellee.

Appeal from the Iowa District Court for Johnson County, Kristin L. Hibbs,
Judge.

Appellant FIA Card Services appeals the district court's denial of its
application and motion to confirm arbitration award that was entered against
appellee Helmer. **REVERSED AND REMANDED WITH DIRECTIONS.**

Charles Litow of Litow Law Office, P.C., Cedar Rapids, for appellant.

Ray Johnson of Johnson Law Firm, West Des Moines, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

FIA Card Services, f/k/a MBNA America Bank (FIA), appeals a district court ruling denying its motion to confirm an arbitration award. The company raises several arguments in support of reversal, one of which is dispositive: the timeliness of the defendant's motion to vacate the award.

I. Background Proceedings

Iowa Code section 679A.11 (2007) provides for district court confirmation of arbitration awards. It states:

Upon application of a party, the district court shall confirm an award, unless within the time limits imposed under sections 679A.12 and 679A.13 grounds are urged for vacating, modifying, or correcting the award, in which case the district court shall proceed as provided in sections 679A.12 and 679A.13.

Iowa Code § 679A.11. Pursuant to this section, FIA filed an application and motion to confirm an arbitration award. FIA alleged that, on September 18, 2006, an arbitration award was entered in its favor. It attached a copy of the award to the motion. According to the attached document, an arbitrator awarded \$22,600.23 to FIA and against Raymond A. Helmer. The document contains an acknowledgment and certificate of service that states the award was served on Helmer by first-class mail on September 19, 2006.

On February 12, 2007, Helmer asked for additional time to respond to the motion. That request was granted on February 20, 2007. One day later, FIA filed a second motion to confirm the arbitration award. FIA asserted that "the time in which to vacate the award has passed and further, the defendant has previously been served with a copy of the award as evidenced by the return of service in the file."

Helmer subsequently filed an application to deny the motion to confirm the award. He essentially acknowledged receipt of the arbitration award attached to FIA's original motion but asserted he had not received prior notice of the arbitration proceeding. He alleged the award was procured by "corruption, fraud, or other illegal means." Helmer also alleged that the arbitration award did not inform him of his statutory right to contest the award.

FIA filed a reply brief to which it attached several documents, including a letter to Helmer dated September 19, 2006, stating Helmer had been served with a copy of the arbitration award.

At a hearing on the motion, Helmer filed a memorandum in support of his resistance to confirmation of the arbitration award. He asserted Iowa Code Chapter 679A did not apply to this case and there was no credible evidence that he "ever agreed to arbitration."

With the court's leave, FIA filed a supplemental brief to which it attached an affidavit. Helmer objected to the affidavit as untimely.

The district court declined to consider the affidavit. The court denied FIA's motion to confirm the arbitration award, concluding "Plaintiff has not established, through its Application and Motion, that there was a valid arbitration agreement between Plaintiff and Defendant."

On appeal, our review is for errors of law. *Humphreys v. Joe Johnson Law Firm, P.C.*, 491 N.W.2d 513, 514 (Iowa 1992).

II. Analysis

FIA argues that Helmer's motion to vacate the arbitration award was untimely. We agree.

As noted, Iowa Code section 679A.11 states that when a party applies for confirmation of an arbitration award, “the district court shall confirm [the] award, unless within the time limits imposed under sections 679A.12 and 679A.13 grounds are urged for vacating . . . the award.” Section 679A.12 authorizes a court to vacate an award on several grounds including “corruption, fraud, or other illegal means,” or the absence of an “arbitration agreement” Iowa Code § 679A.12(1)(a), (e). The section provides the following deadline:

An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant. However, if the application to vacate an award is predicated upon corruption, fraud, or other illegal means, it shall be made within ninety days after those grounds are known or should have been known.

Iowa Code § 679A.12(3). Helmer essentially conceded that he received the arbitration award served on September 19, 2006. Therefore, his deadline for moving to vacate that award would have expired in mid-December, 2006. Helmer did not file his motion until March, 2007. Accordingly, his motion was untimely. Because his motion was untimely, the district court was obligated to confirm the award. See *\$99 Down Payment, Inc. v. Garard*, 592 N.W.2d 691, 694 (Iowa 1999) (“Iowa Code section 679A.11 clearly imposes a duty upon the district court to confirm an arbitration award upon application of a party unless a timely ground to vacate or correct the award has been filed.”).

Helmer makes several arguments to circumvent this clear statutory authority. We find it unnecessary to address these arguments. We also find it unnecessary to address FIA’s remaining arguments for reversal, including its challenge to the exclusion of the affidavit.

We reverse the district court's denial of the application and motion to confirm arbitration award and remand for entry of an order confirming the arbitration award.

REVERSED AND REMANDED WITH DIRECTIONS.