

**IN THE COURT OF APPEALS OF IOWA**

No. 8-994 / 08-0940  
Filed February 4, 2009

**JAMES KRIEG,**  
Plaintiff-Appellant,

**vs.**

**AMERIPRISE FINANCIAL SERVICES,  
INC. and TODD GLAW,**  
Defendants-Appellees.

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Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,  
Judge.

James Krieg appeals from the district court's decision confirming the  
arbitration award. **AFFIRMED.**

Gail E. Boliver of Boliver, Clausen & Bidwell, Marshalltown, for appellant.

William J. Miller of Dorsey & Whitney, L.L.P., Des Moines, and John Rock  
of Dorsey & Whitney, L.L.P., Minneapolis, Minnesota, for appellees.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

**MAHAN, J.**

James Krieg appeals from a district court ruling denying his motion to vacate the decision of a three-member arbitration panel. The district court denied the motion and confirmed the arbitration award. Krieg now appeals.

**I. Background Facts and Proceedings.**

This case arises out of an arbitration award issued by a Financial Industry Regulatory Authority (FINRA) panel of arbitrators. Pursuant to an underlying contractual agreement, the parties had agreed to submit to arbitration. That agreement contains the following language:

- (i) Arbitration is final and binding on the parties.
- (ii) The parties are waiving their right to seek remedies in court, including the right to a jury trial.
- (iii) Pre-arbitration discovery is generally more limited than and different from, court proceedings.
- (iv) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.

Krieg filed a statement of claim with FINRA. Krieg also executed a "Uniform Submission Agreement," which stated that he agreed "to abide by and perform any award(s) rendered pursuant to this Submission Agreement." The defendants filed an answer and executed "Uniform Submission Agreements." An arbitration hearing was held before a three-member panel. The panel reached the unanimous determination that Krieg's claims "each and all, are hereby denied and dismissed with prejudice."

Krieg filed a motion to vacate in the district court based on Iowa Code section 679A.12(1)(f) (2007) (substantial-evidence review). After hearing, the district court issued a ruling concluding substantial-evidence review was

precluded by the language in the arbitration agreement. Krieg moved for a reconsideration, which the district court denied.

Krieg appeals.<sup>1</sup>

## **II. Standard of Review.**

This case is on appeal pursuant to Iowa Code section 679A.17(1)(c), which provides appeal may be taken from an order confirming an arbitration award. We review the district court decision as provided by section 679A.17(2). *See Humphreys v. Joe Johnston Law Firm, P.C.*, 491 N.W.2d 513, 514 (Iowa 1992). Accordingly, our review of this civil court order is for correction of errors at law. *See id.*

## **III. Merits**

Krieg asserts the district court erred in concluding the arbitration agreement language precludes substantial-evidence review. He contends the express statement that “any party’s right to appeal or to seek modification of rulings by the arbitrators is strictly limited” evidences the parties’ agreement that the parties, in fact, have a right to appeal under all provisions of section 679A.12. We reject this argument.

Section 679A.12(1)(f) provides in pertinent part:

1. Upon application of a party, the district court shall vacate an award if any of the following apply:

. . . .

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<sup>1</sup> Defendants contend the appeal is untimely and must be dismissed. This contention has already been addressed by an order of the supreme court, filed before transfer to this court, which denied their motion to dismiss and we do not address it further. *See Explore Info. Servs. v. Court Info. Sys.*, 636 N.W.2d 50, 54 (Iowa 2001) (addressing timeliness of appeal where issue was submitted with appeal).

f. Substantial evidence on the record as a whole does not support the award. The court shall not vacate an award on this ground . . . *if the parties have agreed that a vacation shall not be made on this ground*, or if the arbitration has been conducted under the auspices of the American arbitration association.

(Emphasis added.) In *O'Malley v. Gundermann*, 618 N.W.2d 286, 292 (Iowa 2000), our supreme court found the following language in an arbitration agreement was an agreement that substantial-evidence review would not apply: "The decision of the arbitrator shall be final and binding on both parties of [the] Agreement provided such decision does not exceed the arbitrator's jurisdiction or authority as set forth above."

We conclude the language in the parties' FINRA arbitration agreement similarly restricts a substantial-evidence review. Not only did the parties agree that arbitration was "final and binding on the parties," they also agreed they were "waiving their right to seek remedies in court," and "any right" to appeal is "strictly limited." These provisions of the agreement "clearly impl[y] that the parties did not intend that the arbitrator's decision would be subject to a substantial-evidence challenge or review." *Id.* Therefore, the district court was correct in refusing to vacate the arbitrator's decision. We affirm.

**AFFIRMED.**