

No. 1-10-0484

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DIKERA THOMAS-MOORE,)	
)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 08 M1 302169
)	
TAMARAH LESTER and RAYMOND LESTER,)	The Honorable
)	Moira S. Johnson,
Defendants-Appellees.)	Judge Presiding.
)	

JUSTICE CAHILL delivered the judgment of the court.
Presiding Justice Garcia and Justice R.E. Gordon concurred in the judgment.

ORDER

Held: The circuit court did not abuse its discretion in debarring plaintiff from rejecting an arbitration award that found in favor of defendants and that prevented plaintiff from presenting evidence where plaintiff had failed to comply with the court's discovery orders and had failed to request an extension of time to comply.

Plaintiff Dikera Thomas-Moore contends on appeal that the circuit court abused its discretion in upholding an arbitration award in favor of defendants Tamarah Lester and Raymond

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Lester, which barred plaintiff from presenting evidence as a discovery sanction in accordance with the circuit court's discovery orders entered on March 4, 2009.

Plaintiff rented an apartment from defendants at 538 West 60th Place in Chicago where allegedly she tripped and fell on July 26, 2006, and sustained injuries as a result. Plaintiff filed this action against defendants to recover damages.

On March 4, 2009, the circuit court entered an order requiring the parties to answer written discovery by April 15, 2009, and to provide their discovery depositions by May 15, 2009.

The order stated:

"Failure to comply with the *specific* terms of this order *will* result in both the plaintiff/defendant being barred from testifying *and* presenting any evidence at the arbitration and/or trial of this matter.

The above stated sanction shall remain in effect until removed *by order of court* upon motion by the party against whom the sanction applies." (Emphases in original.)

A discovery closure and arbitration order also entered on March 4, 2009, required that all discovery be completed by May 22, 2009, and that date was marked "final." Plaintiff did not comply with the discovery deadlines, nor did she move for an extension of time before the mandatory arbitration hearing, which was held on June 30, 2009.

At the mandatory arbitration hearing, an award was entered in defendants' favor and against plaintiff as a discovery sanction under the March 4, 2009, orders of the circuit court. The arbitrators did not award a dollar amount and assessed zero costs. The arbitrators barred plaintiff

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from presenting evidence under the March 4 order quoted above. The award reflected that plaintiff's attorney objected to enforcement of that order. The arbitrators found that all parties had participated in good faith.

Plaintiff rejected the arbitration award. Defendants then filed a motion to debar plaintiff from rejecting the award.

On October 21, 2009, the circuit court entered an order debarring plaintiff from rejecting the arbitration award. On the same date, the circuit court entered judgment in favor of defendants and against plaintiff in the amount of zero dollars.

Plaintiff filed a motion to reconsider, which the court denied. Although the motion to reconsider is not included in the record on appeal, plaintiff asserts that it was timely filed on November 19, 2009, and defendants do not dispute that assertion.

Plaintiff appeals, contending that the circuit court abused its discretion in debarring her from rejecting the arbitration award. Plaintiff argues that discovery had not been completed before the arbitration hearing and that she consequently could not present evidence at the arbitration hearing, there was no finding of bad faith, and her attorney participated vigorously at the arbitration hearing. Plaintiff maintains that her actions were not deliberate or in pronounced disregard for the rules and the court.

Defendants respond that the circuit court did not abuse its discretion because plaintiff never requested an extension of the discovery deadline, never sought to vacate the March 4 discovery deadline and closure orders before the arbitration hearing, and instead tried to take advantage of clerical mistakes in the complaint and the two amended complaints (several errors

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in the address where the alleged incident occurred) by arguing that the parties were not "at issue" until plaintiff filed her reply to the affirmative defense.

In reply, plaintiff argues that she did not continuously or deliberately disregard the court's authority and the mandatory arbitration process. She argues that she acted with the understanding that defendants' filings would extend the discovery deadlines. She maintains that if she violated the March 4, 2009, orders, defendants were equally in violation because their compliance with discovery was tardy and they did not appear for discovery depositions. Plaintiff argues that she missed only a single discovery deadline and that the arbitrators found that she had acted in good faith.

A court of review will not reverse a circuit court's imposition of sanctions or decision to debar a party from rejecting an arbitration award unless the circuit court's decision was an abuse of discretion (*Campuzano v. Peritz*, 376 Ill. App. 3d 485, 490 (2007)), that is, arbitrary, fanciful, or unreasonable (*Glover v. Barbosa*, 344 Ill. App. 3d 58, 61 (2003)).

Under Illinois Supreme Court Rule 91(b) (eff. June 1, 1993), parties must participate in an arbitration hearing meaningfully and in good faith. Either the party or the party's attorney is required to appear at the arbitration hearing and to participate meaningfully and in good faith. Rule 91(a), (b); *Goldman v. Dhillon*, 307 Ill. App. 3d 169, 172 (1999). Rule 91(b) provides for the imposition of sanctions, such as debarring a party from rejecting an arbitration award, for a violation of the rule. *Hill v. Joseph Behr & Sons, Inc.*, 293 Ill. App. 3d 814, 817 (1997). Rule 219(c) (eff. July 1, 2002) applies to mandatory arbitration hearings through Rule 91(b). *Nationwide Mutual Insurance Co. ex rel. Mika v. Kogut*, 354 Ill. App. 3d 1, 3 (2004).

Debarment under Supreme Court Rule 219(c) is a possible sanction for a violation of Rule 91(b) even in the absence of a finding of bad faith by the arbitrators. *Glover*, 344 Ill. App. 3d at 60.

At an arbitration hearing, a party is required to subject the case to the type of adversarial testing expected at a trial. *Campuzano*, 376 Ill. App. 3d at 488. A party who fails to participate in an arbitration hearing in good faith and in a meaningful manner fails to subject the case to the type of adversarial testing expected at a trial, and may be barred from rejecting the arbitration award if the conduct constituted a deliberate and pronounced disregard for the rules and the court. *Nationwide Mutual Insurance Co.*, 354 Ill. App. 3d at 4-5. The noncomplying party has the burden to show that its failure to comply was reasonable or the result of extenuating circumstances. *Eichler v. Record Copy Services*, 318 Ill. App. 3d 790, 792-93 (2000).

Here, the issues are whether plaintiff failed to participate in the arbitration hearing meaningfully, and, if so, whether the sanction (debarment of plaintiff from rejecting the arbitration award) was appropriate.

Plaintiff failed to answer the written discovery requests and failed to present herself for a deposition by the court-ordered deadlines. She also failed to seek to vacate the discovery orders and to request an extension of the discovery deadlines before the arbitration hearing. Plaintiff had the responsibility to comply with the court's orders in their entirety. *Campuzano*, 376 Ill. App. 3d at 489. The circuit court had entered an express order stating that plaintiff would be barred from testifying and from presenting evidence if she failed to comply with the order. Plaintiff did not comply and has not shown that her failure to do so was attributable to extenuating circumstances. Given these uncontested facts, the circuit court did not abuse its

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discretion in barring plaintiff from testifying at the arbitration hearing and in debarring her from rejecting the arbitration award, even though the arbitrators found that the parties had acted in good faith. See *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 827 (2010). Plaintiff could not meaningfully participate in the arbitration hearing because she did not comply with court-ordered discovery. *Coleman*, 402 Ill. App. 3d at 827.

The judgment of the circuit court is affirmed.

Affirmed.