

No. 1-09-1409

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

JEAN PAUL JAMES,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee and	)	Cook County.
Counterdefendant-Appellee,	)	
	)	
v.	)	07 M1 195167
	)	
LISA DIGGANS, a/k/a Lisa Brown,	)	
	)	
Defendant-Appellant and	)	
Counterplaintiff-Appellant and	)	
Third-Party Plaintiff-Appellant	)	
	)	
(Newport Condo Association and	)	
Draper and Kramer, Inc.,	)	The Honorable
	)	Lawrence Dunford,
Third-Party Defendants-Appellants).	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.

Presiding Justice Gallagher and Justice Lavin concurred in the judgment.

ORDER

HELD: An award by a majority of arbitrators is permissible pursuant to Supreme Court Rule 92(b). Defendant was not excused from failing to appear at the arbitration hearing due to alleged lack of notice to her attorney, as the rules require notice to parties, and counsel had a duty to learn of the arbitration date and in any event had actual notice. By failing to appear at the hearing, defendant was automatically debarred from rejecting the award. Even if defendant's motion to strike and reset for hearing was characterized as a section 2-1301 motion to vacate under the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2008)), the court did not abuse its discretion in denying it, as Supreme Court Rule 91(a) limits such motions to circumstances where the failure to attend was inadvertent.

In this appeal, we address whether there was effective notice of an arbitration hearing, and whether defendant Lisa Diggans a/k/a Lisa Brown's failure to appear at an arbitration hearing bars her from rejecting or vacating the award and obtaining a second hearing. Defendant was sued for collection of rent and the matter was referred to mandatory arbitration. On the date of the hearing, none of the parties appeared and an award was entered. Defendant moved to strike and reset the arbitration for hearing, arguing she did not receive notice of the hearing date. Plaintiff, Jean Paul James, argued that defendant waived her right to reject the arbitration award because she did not file a timely notice of rejection. The circuit court entered judgment on the award and denied defendant's motion.

On appeal, defendant argues that the award is defective because: (1) the court lacked jurisdiction and the judgment was void because it was entered by two rather than three arbitrators; (2) there was no proper notice of the hearing date and defendant's motion challenging the award should have been granted; and (3) the award is rendered invalid because there was no notice of entry of the award.

We hold that: (1) the fact that the arbitration award was signed by two, rather than three, arbitrators does not render the order void and deprive the court of jurisdiction; (2) the arbitration

rules require only notice to parties, defendant was not excused from failing to appear at the arbitration hearing due to alleged lack of notice and in any event had actual notice, and by failing to appear defendant was automatically debarred from rejecting the award and consented to entry of the award, even if we consider defendant's motion to strike and reset for hearing as a section 2-1301 motion to vacate under the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2008)); and (3) the alleged lack of notice of entry of the award does not render the award invalid because, by failing to appear, defendant in effect consented to entry of judgment by virtue of her failure to appear. Therefore, we affirm the judgment of the circuit court.

BACKGROUND

Plaintiff-Appellee, Jean Paul James, filed an action to collect rent from his tenant, defendant Lisa Diggans a/k/a Lisa Brown (hereinafter "Brown"). Brown filed affirmative defenses, counterclaims, and a third-party complaint against Newport Condo Association and Draper and Kramer, Inc., based upon constructive eviction, breach of the implied warranty of habitability, and violations of several provisions of the Chicago Residential Landlord and Tenant Ordinance (CRLTO) (Chicago Municipal Code § 5-12-010 *et seq.* (amended March 31, 2004)). Brown's initial appearance was *pro se* and indicated that her address was 200 E. Randolph, Chicago, Illinois. A subsequent pleading of October 15, 2007, listed her address as 2045 E. 70th Street, Unit 3, Chicago, Illinois; however, no notice of a change of address appears in the record. On October 31, 2007, Brown retained counsel, who filed his appearance on November 5, 2007, listing his address at 123 W. Madison St., 15th floor, Chicago, Illinois.

On July 29, 2008, the matter was assigned to mandatory arbitration. A hearing was set

for October 7, 2008. On that date, none of the parties or their counsel appeared. The arbitrators entered an award in favor of defendant, but for zero damages, entering a finding of failure to participate in good faith by all parties based on the fact that none of the parties was present. The award was apparently signed by two arbitrators, the chairperson and one other arbitrator. The notice of award was dated October 9, 2008, but was sent to 200 E. Randolph St., Chicago, Illinois, which was the address listed on her initial appearance. The envelope for the notice was stamped return to sender.

On October 10, 2008, defendant filed a “motion to strike and reset arbitration,”¹ stating that there was no notice of the October 7, 2008, arbitration date. In paragraph 2 of the motion, defendant stated that:

“A review of the Cook County Electronic Docket reveal[ed] that notice of the Arbitration in the above matter was sent via postcard on two separate dates, indicating two different hearing dates, one earlier than the other. Defendant’s counsel did not receive any written notice that an arbitration was scheduled for October 7, 2008.”

In paragraph 4 of the motion, defense counsel stated the following:

“Late in the afternoon of October 6, 2008, Plaintiff’s counsel spoke with the Defendant’s counsel, requesting an order resetting the Arbitration for October 23, 2008,

¹ On September 15, 2008, third party defendants Newport Condo Association and Draper and Kramer also moved to continue arbitration to November 21, 2008, or later, and incorrectly identified October 23, 2008, as the arbitration hearing date. On the date of the hearing on the motion, third party defendants failed to appear and the motion was struck from the call.

as she had been told by the Arbitration Center that this is what the Center needed in order to strike the next day's arbitration. Defendant's counsel subsequently faxed the Arbitration Center notice of the fact that two discovery closure/arbitration assignment orders had been entered, with the latest being entered on July 29, 2008. Plaintiff's counsel told Defendant's counsel that she would not be appearing for the arbitration of October 7, 2008."

Defendant further stated in the motion that "there was no possibility to timely present an emergency motion to strike and reset the arbitration date." Defendant prayed that, if there were two arbitration hearing dates set, for purposes of severance, the award in favor of defendant on plaintiff's claim should stand, but that a hearing should proceed on plaintiff's counterclaim on October 23, 2008. The record contains a copy of a facsimile from defense counsel to the arbitration center of an order setting discovery closure dates. However, no motion or agreed order was sent to or filed with the arbitration center.

At the initial hearing on defendant's motion to strike and reset arbitration on February 5, 2009, the court *sua sponte* raised the issue of whether defendant should have been allowed to file her third party claim, given that the same order granting her leave to do so also dismissed the original complaint against her by plaintiff. Previously, on November 6, 2007, defendant's motion for leave to file amended affirmative defenses, counterclaims and a third-party complaint was presented on the regularly scheduled trial call. Neither plaintiff nor his counsel appeared, and so the court entered an order dismissing the complaint for want of prosecution, but also simultaneously granting defendant's motion. The court set a briefing schedule and set the matter

for hearing on defendant's motion to strike and reset the arbitration and to determine the propriety of the third-party complaint on April 9, 2009.

In response to defendant's motion, plaintiff argued that the issue did not rest on whether defendant's third party complaint survived the dismissal of the original complaint, but on the fact that no rejection of award was filed within the 30-day period subsequent to entry of the award, and thus defendant waived her right to reject the award. On April 9, 2009, the circuit court entered judgment on the award of arbitration in favor of defendant and third-party defendants awarding zero damages to defendant, and further denying defendant's motion to vacate the arbitration award. Defendant appeals.

ANALYSIS

Defendant argues that the trial court's denial of her motion to strike and reset the arbitration hearing was erroneous for the following reasons: (1) the court lacked jurisdiction and the judgment was void because it was entered by two rather than three arbitrators; (2) there was no proper notice of the hearing date and defendant's motion challenging the award should have been granted; and (3) the award is rendered invalid because there was no notice of entry of the award.

I. Jurisdiction

We first address defendant's jurisdictional challenge. Defendant argues that the rendering of an award by less than three arbitrators deprived the trial court of subject-matter jurisdiction over the award, and that she is thus not barred from challenging the arbitration award. In response, plaintiff argues that defendant waived this argument because she did not raise it below.

We disagree and underscore the well-established fact that “[s]ubject matter jurisdiction can be raised at any time and may even be raised *sua sponte* by a reviewing court.” *Ruff v. Splice, Inc.*, 398 Ill. App. 3d 431, 435, 923 N.E.2d 1250, 1253 (2010), citing *Jones v. Industrial Commission*, 335 Ill. App. 3d 340, 343, 780 N.E.2d 697, 700 (2002). Thus, we find defendant has not waived a jurisdictional challenge by her failure to raise the argument below, and proceed to address the issue.

Defendant contends that the arbitration award is invalid because it was signed by two, rather than three, arbitrators, citing to section 2-1003A of the Mandatory Arbitration System provisions of the Illinois Code of Civil Procedure (735 ILCS 5/2-1003A (West 2008)) and Illinois Supreme Court Rule 87 in support. Section 2-1003A provides: “Arbitration hearings shall be conducted in panels of three or of such lesser number as may be stipulated by the parties.” 735 ILCS 5/2-1003A (West 2008). Supreme Court Rule 87 provides that “[t]he panel of arbitrators shall consist of three members of the bar, or such lesser number as may be agreed upon by the parties ***.” Ill. S. Ct. R. 87(b) (eff. Feb. 1, 2007). Defendant also relies on *Henley v. Economy Fire & Casualty Co.*, 153 Ill. App. 3d 66, 73, 505 N.E.2d 1091, 1095 (1987), for defendant’s proposition that “where there is a minimal three-arbitrator panel requirement, an award made by fewer than three should be vacated.” In response, plaintiff merely argues that *Henley* is distinguishable, and that defendant’s other authorities are outside our jurisdiction and therefore not binding.

However, defendant’s jurisdictional challenge is groundless. Supreme Court Rule 92(b), which neither party cites, expressly allows an arbitration award by two, rather than three,

arbitrators:

“Determining an Award. The panel shall make an award promptly upon termination of the hearing. The award shall dispose of all claims for relief. The award may not exceed the monetary limit authorized by the Supreme Court for that circuit or county within that circuit, exclusive of interest and costs. The award shall be signed by the arbitrators *or the majority of them*. A dissenting vote without further comment may be noted. *** (Emphasis added.)” Ill. S. Ct. R. 92(b) (eff. Jan. 1, 1994).

Thus, we find Supreme Court Rule 92(b) is dispositive.

We further agree with plaintiff that the authorities cited by defendant outside our jurisdiction are inapplicable, as in our state the provision of Supreme Court Rule 92(b) is clear. Also, older precedent cited in defendant’s reply regarding the necessity of unanimous decisions by three arbitrators (e.g., *Stose v. Heissler*, 120 Ill. 433, 11 N.E. 161, 163 (1887)) has been superceded by the enactment of our Code’s statutory provisions on Mandatory Arbitration and the adoption of our Supreme Court Rules on Mandatory Arbitration. See 735 ILCS 5/2-1001A-1009A (West 2008); Ill. S. Ct. R. 86-95 (eff. June 1, 1987).

We also agree that *Henley* is not on point and does not stand for the proposition urged by plaintiff. In *Henley*, the arbitrators’ initial oral decision was reduced to writing, addressed to the plaintiff’s attorneys and signed by one arbitrator, stating that it had been the “unanimous decision” of all arbitrators. *Henley*, 153 Ill. App. 3d at 69, 505 N.E.2d at 1093. One of the arbitrators wrote a letter stating that he had not agreed to the directed finding and that the arbitrators did not vote as such. *Henley*, 153 Ill. App. 3d at 69, 505 N.E.2d at 1093. The trial

court granted plaintiff's motion to vacate the award, and ordered the parties to rearbitrate the matter, noting that two arbitrators had issued a second amended arbitration award, *nunc pro tunc*, restating the original decision, and that the third arbitrator was not consulted on the various decisions which had been made by the other two arbitrators subsequent to the initial hearing. *Henley*, 153 Ill. App. 3d at 70-71, 505 N.E.2d at 1094. On appeal, this court found that the failure to discuss the plaintiff's request for reconsideration with the third arbitrator violated the well-established rule that all arbitrators must act together and "be present, or * * * be given an opportunity to be present, at each and every meeting, equally, whether the meeting be for the hearing of evidence, arguments of the parties, or for consultation or determination of the award." *Henley*, 153 Ill. App. 3d at 73, 505 N.E.2d at 1095, quoting *West Towns Bus Co. v. Division 241 Amalgamated Association of Street Electric Ry. & Motor Coach Employees of America, AFL-CIO*, 26 Ill. App. 2d 398, 409, 168 N.E.2d 473, 478 (1960).

We note the recognition in *Henley* that a majority award is valid, so long as the arbitrators hear the matter and act together: "This is so, even when * * * a majority award shall be valid. (Emphasis added.)" *Henley*, 153 Ill. App. 3d at 73, 505 N.E.2d at 1095, quoting *West Towns Bus Co.*, 26 Ill. App. 2d at 409, 168 N.E.2d at 478. It was the failure of all of the arbitrators to act together that prejudiced the plaintiff and provided additional grounds for vacation of the award, not the fact that the ultimate decision was reached by only two of the three arbitrators. *Henley*, 153 Ill. App. 3d at 73, 505 N.E.2d at 1095. For this same reason, defendant's remaining authorities cited in reply are also inapposite and do not support defendant's blanket assertion that awards by only two arbitrators are void. See, e.g., *Alexander v. Cunningham*, 111 Ill. 511, 1884

WL 9981 (1884); *Taylor v. Vessel Owners' Towing Co.*, 25 Ill. App. 503, 1888 WL 4216 (1887).²

Here, the record is silent and there is no evidence of any failure of all three arbitrators to hear the matter and act together, nor does defendant even argue this was the case, instead merely relying on the fact that only two arbitrators signed the award. As noted, Supreme Court Rule 92(b) explicitly allows arbitration awards by a majority of the panel. Thus, there is no support for defendant's contention that an award by only two arbitrators presents a jurisdictional defect; therefore the court had jurisdiction.

II. Notice of Hearing Date

Defendant next argues that the circuit court should have vacated the arbitration award because she did not receive notice of the hearing. The record shows the hearing was scheduled for and was held on October 7, 2008. No parties appeared. However, the defendant's pleadings clearly indicate she had notice because her attorney had a conversation the day before, on October 6, 2008, to try to reset the date.

The parties dispute the applicable standard of review. Defendant argues that a *de novo* standard of review applies here because the construction of a statute is involved. Meanwhile,

² *Eissman v. Pace Suburban Bus Division of the Regional Transportation Authority*, 315 Ill. App. 3d 574, 734 N.E.2d 940 (2000), is entirely inapposite, as the underlying judgment entered on an arbitration award was void because the award was entered after the matter had been transferred to the law division; the arbitrators lacked authority to enter an award because the case was no longer before them. *Eissman*, 315 Ill. App. 3d at 579, 734 N.E.2d at 944.

plaintiff treats the court's determination as a denial of a motion to vacate under section 2-1301 of the Code (735 ILCS 5/2-1301 (West 2008)), and thus maintains the standard of review is abuse of discretion.

The court's order entering judgment on the arbitration award and denying defendant's motion to strike and reset the hearing does not provide the court's basis for its ruling, nor did defendant include a report of proceedings of the hearing when the court made its ruling. Thus, we do not know whether the court accepted plaintiff's argument that the arbitration award should be entered because defendant failed to timely file a notice of rejection, or whether the court based its decision on an alternative basis for denying defendant's motion, or whether the court treated the motion as a motion to vacate.

As we discuss, the statutory provisions and Supreme Court Rules are clear and involve no construction and thus a *de novo* standard of review is inappropriate. Regardless of the circuit court's reasoning for its ruling, whether the circuit court's determination is characterized as an order debarring defendant from rejecting the award or as an order denying a motion to vacate pursuant to section 2-1301, we review the court's decision for an abuse of discretion. The applicable standard of review for a sanction debarring a party from rejecting an arbitration award for failure to appear is abuse of discretion. See *Williams v. Dorsey*, 273 Ill. App. 3d 893, 901, 652 N.E.2d 1286, 1292 (1995). The trial court is similarly vested with discretion in determining the propriety of granting a section 2-1301 motion. 735 ILCS 5/2-1301(e) (West 2008). See also *Williams*, 273 Ill. App. 3d at 904, 652 N.E.2d at 1293-94. We may find an abuse of discretion only where no reasonable person would take the position adopted by the trial court; that is, where

the trial court acted arbitrarily or ignored recognized principles of law. *Jackson v. Bailey*, 384 Ill. App. 3d 546, 548-49, 893 N.E.2d 280, 283 (2008), citing *Somers v. Quinn*, 373 Ill. App. 3d 87, 95-96, 867 N.E.2d 539, 547 (2007).

Supreme Court Rule 91 provides that arbitration hearings “shall proceed in the absence of any party who, *after due notice*, fails to be present. (Emphasis added.)” 134 Ill. S. Ct. R.91 (eff. June 1, 1993). Supreme Court Rule 88 states that the procedure for setting the date for arbitration hearings shall be set forth by circuit rules, “provided that not less than 60 days’ notice be given to the parties or their attorneys of record.” Ill. S. Ct. R.88 (eff. June 1, 1987). Under Supreme Court Rule 91, the failure of a party to attend a mandatory arbitration hearing constitutes a waiver of that party’s right to reject the award and represents a consent to the entry of judgment by the circuit court in accordance with the award. Ill. S. Ct. R. 91 (eff. June 1, 1993). Illinois Supreme Court Rule 91(a) is mandatory, so that a party who fails to appear at an arbitration hearing either in person or through counsel is automatically barred from rejecting the arbitration award, without further action of the circuit court. *Jackson*, 384 Ill. App. 3d at 548, 893 N.E.2d at 283. Illinois Supreme Court Rule 93(a) provides that the filing of a notice of rejection of an arbitration award shall not be effective as to any party who is debarred from rejecting an award. Ill. S. Ct. R. 93(a) (eff. Jan. 1, 1997). Instead, Supreme Court Rule 91(a) provides that the absent party’s sole remedy is to file a motion or petition to vacate the judgment under sections 2-1301 or 2-1401 under the Illinois Code of Civil Procedure (735 ILCS 5/1-1 *et seq.* (West 2008)). Ill S. Ct. Rule 91 (eff. June 1, 1993).

Defendant argues that an award entered without due notice is “void as a matter of law,”

and that she was not required to file a notice of rejection due to the purported defective notice. Plaintiff maintains that defendant received due notice under the Illinois Supreme Court Rules, and that even if notice was deficient defendant's failure to appear debars defendant from rejecting the award and/or having the award vacated. Plaintiff further argues that defendant failed to satisfy Supreme Court Rule 91(a) and did not file a motion to vacate judgment under either section 2-1301 or section 2-1401, instead filing a "Motion to Strike and Reset Arbitration."

In arguing that a judgment in the absence of proper notice is void, defendant relies on *Ratkovich v. Hamilton*, 267 Ill. App. 3d 908, 642 N.E.2d 834 (1994). In *Ratkovich*, a defendant was permitted to intervene in the case after notices of the arbitration hearing were sent to the original parties, but none issued to the intervening defendant, who subsequently failed to appear. *Ratkovich*, 267 Ill. App. 3d at 910-11, 642 N.E.2d at 835-36. This court held that if a party does not receive notice of an arbitration hearing as required by Rule 88, an award entered at a hearing in the absence of that party is void. *Ratkovich*, 267 Ill. App. 3d at 914, 642 N.E.2d at 838. However, defendant acknowledges the holding of *Juszczuk v. Flores*, 334 Ill. App. 3d 122, 777 N.E.2d 454 (2002), in a footnote in her reply, where this court clarified that a judgment entered where a party fails to receive 60 days' written notice of an arbitration hearing under Supreme Court Rule 88 is voidable, not void. *Juszczuk*, 334 Ill. App. 3d at 125-26, 777 N.E.2d at 457. *Juszczuk*, 334 Ill. App. 3d at 126, 777 N.E.2d at 457-58. See also *Government Employees Insurance Co. v. Hersey*, 397 Ill. App. 3d 551, 554, 922 N.E.2d 518, 521 (2010) (rejecting party's reliance on *Ratkovich* for the proposition that an order entered without notice to a party is void, in light of subsequent supreme court decisions), citing *Juszczuk*, 334 Ill. App. 3d at 124-25,

In turn, defendant argues that her motion to strike and reset arbitration, filed October 8, 2010, if not a valid attack on the judgment as void, qualifies as a section 2-1401 motion in substance and thus satisfies Supreme Court Rule 91(a). “[T]he character of a motion should be determined from its content, and a court is not bound by the title of a document given by a party.” *R & G, Inc. v. Midwest Region Foundation for Fair Contracting, Inc.*, 351 Ill. App. 3d 318, 321, 812 N.E.2d 1044, 1046-47 (2004), quoting *Savage v. Mui Pho*, 312 Ill. App. 3d 553, 559, 727 N.E.2d 1052, 1057 (2000). “Thus, a court should examine the substance of a document to determine how it should treat the document.” *R & G, Inc.*, 351 Ill. App. 3d at 321, 812 N.E.2d at 1047, citing *Silverstein v. Brander*, 317 Ill. App. 3d 1000, 1005, 740 N.E.2d 357, 360-61 (2000). However, here defendant’s motion prayed for the court “to enter an order setting this cause for arbitration on October 23, 2008 ***, determining that [d]efendant is not barred by the arbitration award of October 7, 2008, from presenting at such hearing evidence of her damages for her Counterclaims and Third-Party Complaint, and for such further relief as this Court deems just.” Thus, defendant’s motion did not seek to vacate the arbitration award in her favor on plaintiff’s complaint but, rather, sought a further arbitration hearing at which she could present her counterclaim and third-party complaint. To characterize defendant’s motion as a motion to vacate under section 2-1401 is dubious at best.

Further, section 2-1301, not section 2-1401, applies to motions to vacate a default judgment filed within 30 days of judgment. 735 ILCS 5/2-1301(e) (West 2008). However, even if we were to consider defendant’s motion as a section 2-1301 motion, defendant’s petition for

relief fails. Defendant contends that the court should have vacated the arbitration award because no notice was mailed to defense counsel, and that, reading Supreme Court Rule 88, Cook County Circuit Court Rule 2.1(c)(i), and Supreme Court Rule 11(a) together, after an attorney has filed an appearance all notices should be sent to the attorney at his address of record. Defendant relies upon Cook County Circuit Court Rule 2.1(c)(i), titled “Notice of Hearing of Motions,” which provides that “[n]otice shall be given in the manner and to the persons described in Supreme Court Rule 11.” Cook Co. Cir. Ct. R. 2.1(c)(i) (August 21, 2000). Supreme Court Rule 11 in turn provides that service shall be made upon the attorney, if a party is represented by an attorney of record; otherwise, service shall be made upon the party. Ill. S. Ct. Rule 11(a) (eff. November 15, 1992). However, the plain language of rule 2.1(c)(i) clearly indicates that its notice provision applies to “Hearing of Motions.” At issue is not a hearing on a motion within the arbitration proceedings, but, rather, the arbitration proceeding itself. Thus, we turn to the local rule on notice of proceedings.

Cook County Circuit Court Rule 1.1(a) provides that: “Notice of all proceedings in an action shall be given to all *parties* who have appeared and have not been found by the Court to be in default ***. [Emphasis added.]” Cook Co. Cir. Ct. R. 1.1(a) (July 1, 1976).³ Defendant does

³ We note that the Mandatory Arbitration Handbook for Cook County states that: “The Arbitration Administrator notifies in writing all *parties of record* of the hearing date and time at least 60 days before the hearing.” (Emphasis added.) Honorable Timothy J. Evans, Chief Judge, State of Illinois, Circuit Court of Cook County Mandatory Arbitration Handbook (2005), at 10, <http://www.cookcountycourt.org/publications/pdf/MandatoryArbitration2005.pdf>.

not cite any authority for the proposition that Cook County Circuit Court Rule 1.1(a) also requires notice to attorneys for arbitration proceedings, nor does our research reveal any. The plain language of the rule requires only notice to parties. The best indication of legislative intent is the statutory language given its plain and ordinary meaning. *People ex rel. Madigan v. Kinzer*, 232 Ill. 2d 179, 184, 902 N.E.2d 667, 670-71 (2009), citing *Holly v. Montes*, 231 Ill. 2d 153, 159, 896 N.E.2d 267, 272 (2008). We may not depart from a statute's plain language by reading into it exceptions, limitations, or conditions the legislature did not express. *Kinzer*, 232 Ill. 2d at 184-85, 902 N.E.2d at 671, citing *People v. Lewis*, 223 Ill. 2d 393, 402, 860 N.E.2d 299, 305 (2006). Courts should not attempt to read a statute other than in the manner it was written. *Kinzer*, 232 Ill. 2d at 185, 902 N.E.2d at 671, citing *Rosewood Care Center, Inc. v. Caterpillar, Inc.*, 226 Ill. 2d 559, 567, 877 N.E.2d 1091, 1096 (2007). Here, notice was sent to defendant at the address which was on file, as defendant did not file a notice of change of address.

Moreover, “[a] party’s lack of notice of the date of a hearing does not necessarily excuse the party’s failure to appear at the hearing.” *Jackson v. Bailey*, 384 Ill. App. 3d 546, 549, 893 N.E.2d 280, 284 (2008), citing *Tiller v. Semonis*, 263 Ill. App. 3d 653, 657, 635 N.E.2d 572, 574 (1994). Where a party fails to attend, that party has the burden of showing that his noncompliance was reasonable or the result of extenuating circumstances. *Jackson*, 384 Ill. App. 3d at 549, 893 N.E.2d at 283, citing *Government Employees Insurance Co. v. Smith*, 355 Ill. App. 3d 915, 924, 824 N.E.2d 1087, 1094 (2005).

In *Jackson*, the defendant filed a section 2-1301 motion and similarly argued for vacatur of an arbitration award after defendant and his counsel failed to appear, based on the fact that the

notice was sent to the defendant's old, pre-2002 address and was returned to sender as undeliverable. *Jackson*, 384 Ill. App. 3d at 547, 893 N.E.2d at 282. The record showed that the clerk of the court sent notice of the arbitration hearing to the parties, but not to the defendant's attorney. *Jackson*, 384 Ill. App. 3d at 547, 893 N.E.2d at 282. Just as in the instant case before us, the defense counsel in *Jackson* also argued that notice to a party is not sufficient when that party was represented by counsel with an appearance on file. *Jackson*, 384 Ill. App. 3d at 547, 893 N.E.2d at 282. Defense counsel admitted it was his practice to simply await the arbitration notice from the clerk. *Jackson*, 384 Ill. App. 3d at 549, 893 N.E.2d at 284. On those facts, we found that the defendant failed to show reasonable compliance or extenuating circumstances for the defendant's absence, either in person or through counsel, and affirmed the judgment of the circuit court denying vacatur of the arbitration award. *Jackson*, 384 Ill. App. 3d at 549, 893 N.E.2d at 284-85.

In reaching our holding in *Jackson*, we noted and relied on our holding in *Tiller*, also affirming the denial of vacatur of an award to a litigant who failed to attend a mandatory arbitration hearing and similarly claimed in his vacatur motion that counsel did not receive postcard notice of the hearing. *Jackson*, 384 Ill. App. 3d at 549, 893 N.E.2d 280, 284 (2008), citing *Tiller v. Semonis*, 263 Ill. App. 3d 653, 657, 635 N.E.2d 572, 574 (1994). We held that “[a]ttorneys have a legal and ethical duty to act with reasonable diligence in representing their client's interests, including tracking their cases and learning the date upon which a hearing is to occur.” *Jackson*, 384 Ill. App. 3d at 549, 893 N.E.2d 280, 283-84 (2008), citing *Tiller*, 263 Ill. App. 3d at 657, 635 N.E.2d at 574. Thus, regardless of whether he received notice, defense

counsel had a duty to keep track of his client's case and learn of the correct arbitration date. We find the holding of *Jackson* dispositive.

If defendant wished to raise the issue of defective notice of the arbitration hearing date, Cook County Circuit Court Local Rule 18.11 specifically provides that in cases of defective notice, "litigants must request a new arbitration hearing date from the court." Cook Co. Cir. Ct. R. 18.11. Defendant's failure to appear on October 7, 2008, at least to request a new arbitration hearing date from the court, is even more difficult to comprehend. The record reveals defendant was in receipt of an order setting discovery closure dates. In defendant's own motion to strike and reset hearing, defendant states that after she learned of the award, an inquiry into the electronic database revealed that two arbitration dates were set. Defendant offers no excuse for failing to check on the status of the case and perform such an inquiry earlier to learn of the hearing date, nor do we find such conduct reasonable.

Further, although defendant vigorously disputes this fact, according to defendant's own motion to strike and reset the hearing date on behalf of defendant, defense counsel had actual notice of the arbitration hearing date as of October 6, 2008. In the motion, defense counsel averred that he spoke with plaintiff's counsel on October 6, 2008, and agreed to reset the arbitration hearing date, and that plaintiff's counsel stated he would not appear the next day at the hearing. Defense counsel did not file a motion or appear the next day at the hearing, instead apparently relying on the purported verbal agreement with opposing counsel.

Allegations in a pleading are formal, conclusive judicial admissions withdrawing a fact from issue, provided the pleading has not been amended, abandoned, or withdrawn. *Farmers*

Auto. Ins. Association v. Danner, 394 Ill. App. 3d 403, 412, 924 N.E.2d 1053, 1061 (2009); *Roti v. Roti*, 364 Ill. App. 3d 191, 200, 845 N.E.2d 892, 900 (2006). Our supreme court defines judicial admissions as “deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge. [Citation.]” *Roti*, 364 Ill. App. 3d at 200, 845 N.E.2d at 900. In order to qualify as a judicial admission, the statement must be clear, unequivocal and within the party's personal knowledge. *Derby Meadows Util. Co. v. Inter-Continental Real Estate*, 202 Ill. App. 3d 345, 355, 559 N.E.2d 986, 991 (1990), citing *Kirby v. Jarrett*, 190 Ill. App. 3d 8, 15, 545 N.E.2d 965, 969 (1989), citing *Hansen v. Ruby Construction Co.*, 155 Ill. App. 3d 475, 508 N.E.2d 301 (1987). An unequivocal admission made in a pleading may be conclusive against the party making such admission. *Cleveringa v. J.I. Case Co.*, 230 Ill. App. 3d 831, 844, 595 N.E.2d 1193, 1203 (1992), citing *Baker-Wendell, Inc. v. Cohon & Associates, Ltd.*, 100 Ill. App. 3d 924, 929, 427 N.E.2d 317, 320-21 (1981). An admission in an unverified, unamended⁴ pleading signed by an attorney is binding on the party as a judicial admission. *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 558, 836 N.E.2d 640, 659 (2005).

Here, the motion to strike and reset the hearing date, containing the averment of knowledge of the hearing date was signed by defense counsel and was never subsequently amended. Defendant is bound by the judicial admission that defense counsel had actual notice of the hearing date. It is well settled that notice to an attorney is notice to his client, and knowledge

⁴ Once an unverified pleading is amended, an admission can then only be used as an evidentiary admission and not as a judicial admission. *Knauerhaze*, 361 Ill. App. 3d at 558, 836 N.E.2d at 659. However, in this case there was no amendment of the motion.

of an attorney is imputed to the client. *Smith v. Johnson*, 278 Ill. App. 3d 387, 391, 662 N.E.2d 531, 535 (1996). Thus, notwithstanding any lack of postcard notice, defense counsel had actual notice of the hearing set for October 7, 2008, and still failed to attend.

We note that Supreme Court Rule 91(a) limits the circumstances under which a party failing to appear at an arbitration can file a motion to vacate the judgment under sections 2-1301 or 2-1401 to circumstances “[w]here the failure to attend was *inadvertent*.” (Emphasis added.) Ill S. Ct. Rule 91 (eff. June 1, 1993). Here, defendant’s own motion indicates defendant had actual knowledge of the arbitration hearing on October 7, 2008, and that defense counsel discussed rescheduling the matter with plaintiff’s counsel. Under the facts of this case, it can hardly be said that the failure to attend was “inadvertent.” Therefore, the court's denial of defendant's motion was not an abuse of discretion, even if treated as a section 2-1301 motion.

Defendant argues that based on the evidence, the circuit court should have determined that she did not in fact receive due notice of the hearing, because it can be presumed that it went to the wrong address because the notice of the award was sent to her old work address and was marked “return to sender.” However, we agree with plaintiff that in the absence of a more complete record regarding the basis for the court’s order denying defendant’s motion, we must presume that the court’s action “was in conformity with the law and was properly supported by evidence,” and that any doubts arising from an incomplete record should be resolved against the appellant. *Foutch v. O’Bryant*, 99 Ill. 2d 389, 393, 459 N.E.2d 958, 960 (1984).

Despite defendant’s argument to the contrary, precedent is clear that we continue to adhere to the rule in *Foutch* that “[a]ny doubts arising from the inadequacy of the record will be

resolved against the defendant.” *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 155, 839 N.E.2d 524, 531 (2005), quoting *Weaver v. Midwest Towing, Inc.*, 116 Ill. 2d 279, 285, 507 N.E.2d 838, 840 (1987), citing *Foutch*, 99 Ill. 2d at 391-92, 459 N.E.2d at 959. “While we may consider the issues raised by defendants by reference to the common law record [citation], any doubts raised by insufficiencies in the record must be resolved against defendants who had the obligation to present this court with a sufficiently complete record of the trial court proceedings to support their claims of error [*Foutch*, 99 Ill. 2d at 391-92, 459 N.E.2d at 959].” *Williams*, 273 Ill. App. 3d at 896-97, 652 N.E.2d at 1289. “[A]s the appellant, defendant has the burden of showing error; any doubt arising from incompleteness of the record will be resolved against the appellant.” *People v. Kirkpatrick*, 240 Ill. App. 3d 401, 406, 608 N.E.2d 256, 259 (1992).

We note that defendant offers no explanation for her failure to include a report of proceedings for the hearing on April 9, 2009, when the court denied her motion to strike and reset the arbitration. “An issue relating to a circuit court’s factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding.” *Corral*, 217 Ill. 2d at 156, 839 N.E.2d at 532, citing *Webster v. Hartman*, 195 Ill. 2d 426, 432, 749 N.E.2d 958, 962 (2001) (“Where the issue on appeal relates to the conduct of a hearing or proceeding, this issue is not subject to review absent a report or record of the proceeding”). “Where the record is incomplete, the reviewing court will indulge every reasonable presumption favorable to the judgment order, or ruling from which the appeal is taken. [Citation].” *In re Marriage of Cepek*, 230 Ill. App. 3d 1045, 1046, 596 N.E.2d 131, 133 (1992). Moreover, “it will be presumed that the trial court heard sufficient evidence and argument to support its decision.

[Citation].” *In re Marriage of Cepek*, 230 Ill. App. 3d at 1046, 596 N.E.2d at 133. See *Corral*, 217 Ill. 2d at 156, 839 N.E.2d at 531 (supreme court affirmed the trial court’s denial of a motion to transfer venue where there was no transcript of the hearing, and thus the supreme court could not know what evidence or arguments were presented at that hearing, nor what the circuit court’s findings of fact or its reasoning in denying defendant’s motion were); *In re Stephanie P.*, 341 Ill. App. 3d 887, 892, 794 N.E.2d 397, 401 (2003) (because the respondent-appellant failed to provide a transcript or other record of the hearing at which the court granted DCFS’ petitions to be discharged as guardian over the respondent’s children, we presumed that the trial court’s order terminating DCFS’ guardianship had a sufficient factual basis and followed the law, thus resolving the issue against her). Accordingly, given the lack of the transcript of the hearing, in reviewing the court’s determination for abuse of discretion, we employ a presumption that the circuit court’s determination complied with the law and was supported by evidence.

In addition, here the court was also well within its discretion in refusing to vacate the arbitration award based on the arbitration panel’s finding that the parties failed to participate in good faith. The panel entered a finding that all of the parties did not participate in good faith based on the fact that “no one from either side appeared at [the] arbitration hearing.” Supreme Court Rule 91(b) provides that if the panel finds a lack of good faith participation and makes such a finding on the award, “[s]uch award shall be *prima facie* evidence that the party failed to participate in the arbitration hearing in good faith and in a meaningful manner,” and a court “may order sanctions as provided in [Supreme Court] Rule 219(c), including, but not limited to, an order debarring that party from rejecting the award.” Ill. S. Ct. R. 91(b) (eff. June 1, 1993).

Thus, there is ample support for the trial court's entry of judgment on the arbitration award and denial of defendant's motion to strike and reset the arbitration hearing.

III. Notice of Award

Lastly, defendant also contends that she is not bound by the award because she never received notice of the arbitration award after it was entered. Defendant argues that the record indicates the notice of the award was stamped "return to sender." Supreme Court Rule 92(b) provides that, after an award is determined, "the award shall be filed immediately with the clerk of the court, who shall serve notice of the award, and the entry of the same on the record, to other parties, including any in default." Ill. S. Ct. R. 92(b) (eff. Jan. 1, 1994). Section 1004A further provides that "[f]ollowing an arbitration hearing as prescribed by rule, the arbitrator's decision shall be filed with the circuit court, together with proof of service on the parties." 735 ILCS 5/2-1004A (West 2008). Here, the clerk of court sent notice of award by mail to defendant at her address on file.

However, whether defendant received notice of the award does not change the fact of defendant's consent to entry of judgment by virtue of her failure to appear. As we have discussed above, by her failure to appear, defendant was automatically debarred from filing a notice of rejection. Under Supreme Court Rule 91, the failure of a party to attend a mandatory arbitration hearing constitutes a waiver of that party's right to reject the award and *represents a consent to the entry of judgment* by the circuit court in accordance with the award. (Emphasis added.) Ill. S. Ct. R. 91 (eff. June 1, 1993). A party who fails to appear at an arbitration hearing either in person or through counsel is automatically barred from rejecting the arbitration award

(*Jackson*, 384 Ill. App. 3d at 548, 893 N.E.2d at 283), and the filing of a notice of rejection of an arbitration award in this circumstance shall not be effective (Ill. S. Ct. R. 93(a) (eff. Jan. 1, 1997)).

The Committee Comments to Supreme Court Rule 91 underscore the fact that parties must comply with the rules and appear for mandatory arbitration:

“To permit any party or counsel to ignore the arbitration hearing or to exhibit an indifference to its conduct would permit a mockery of this deliberate effort on behalf of the public, the bar and judiciary to attempt to achieve an expeditious and less costly resolution of private controversies. A party who knowingly fails to attend the scheduled hearing, either in person or by counsel, must be deemed to have done so with full knowledge of the consequences that inhere with this rule.” Ill. S. Ct. R. 91, Committee Comments.

See also *Fiala v. Schulenberg*, 256 Ill. App. 3d 922, 929, 628 N.E.2d 660, 664 (1993), quoting Ill. S. Ct. R. 91, Committee Comments, and citing *Balaban v. Gottfried*, 220 Ill. App. 3d 535, 536, 581 N.E.2d 205. Where no other supreme court rule requires a more lenient approach, we have not hesitated to enforce the mandatory arbitration rules strictly. *Stemple v. Pickerill*, 377 Ill. App. 3d 788, 794, 879 N.E.2d 1042, 1048 (2007). We find no abuse of discretion. Therefore, we affirm the judgment of the circuit court.

CONCLUSION

For the foregoing reasons, we affirm the circuit court’s judgment.

Affirmed.