FIRST DIVISION
December 23, 2013

No. 1-13-0773
2013 IL App (1st) 130773-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HYDRA PROPERTIES, LLC, Plaintiff-Appellant, v. MARC SIEBZENER, MARCI SIEBZENER, and IRA PILTZ, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 11 CH 12530 Honorable Leroy K. Martin, Jr., Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment.

ORDER

Held: Arbitration order must be confirmed where motion to vacate or modify order was not filed within 90 days of arbitration.

¶1 Defendant Marc Siebzener and one of his business partners, Avigdor Horowitz, submitted a dispute to a panel of arbitrators. The panel ruled in Horowitz's favor and he tasked plaintiff Hydra Properties with enforcing the ruling in the circuit court. The circuit court, however, declined to confirm the arbitration award and dismissed plaintiff's claims. We reverse and remand.

¶2 The underlying business dispute is complicated and somewhat unclear in the record, but the facts are largely irrelevant to this appeal. Horowitz and Marc, along with other

unnamed investors, formed a partnership in order to purchase and run an assisted-living facility. Marc, however, had been convicted of mail fraud several years earlier and was thus barred from direct participation in any business that could receive payments through Medicare. To get around this problem, Marc's wife Marci acted as his nominee in any business dealings. Marc and Horowitz formed a second company (the exact ownership structure is not clear in the record) called Haven Management that would run the facility. It appears that Marci acted as manager for both the holding company and the management company. A few years later, the Siebzeners had a falling out with Horowitz that ended with Marci invoking her authority as the manager of the holding company to terminate Haven Management's contract with the holding company, which ended Horowitz's ability to earn management fees from the project. The Siebzeners continued to earn management fees through a new management company that the holding company contracted with.

¶3 Horowitz thought that this was improper and he asked to have the dispute arbitrated by the Jewish Ecclesiastical Court of the Chicago Rabbinical Council. Both Marc and Horowitz signed an arbitration agreement, but Marci apparently did not. There are two versions of the arbitration agreement in the record. The first seems to be a draft, and although it contains signature lines for both of the Siebzeners as well as Horowitz and his wife, it is signed only by the Horowitzes. The second agreement, dated about a month later but still prior to the arbitration hearing, contained executed signature lines for only Marc and Horowitz. Marci's name does not appear anywhere on the document.

¶4 The arbitration panel heard the case and issued its ruling in a written decision. Although the panel found that Marci was within her contractual rights to terminate Horowitz from the management agreement, it decided that the termination was improper

under Jewish law. The panel ordered "[Marci], as manager of the *** facility, *** to immediately either renew the agreement with Haven Management or include Mr. Horowitz in the profits from the new entity. In deference to the claim that [Marci] is shouldering all of the work, the [arbitration panel] considers a fair and equitable distribution of the profits from Haven Management or the Siebzeners' new entity to be 2/3 for the Siebzeners and 1/3 for Mr. Horowitz." Notably, the order is directed only to Marci and does not explicitly mention Marc. After the ruling, Marc obtained a new attorney, defendant Ira Piltz, to represent the Siebzeners in a possible appeal of the ruling. Piltz filed an appeal to the arbitrators about six months after the judgment, but then withdrew it six months later at the Siebzeners' request before the panel took any action on it.

¶5 Shortly after Piltz withdrew the appeal, plaintiff filed a complaint in the circuit court against both Marc and Marci to confirm the arbitration order. In response, Marc and Marci filed separate motions to vacate the arbitration award and dismiss the complaint. Marci contended that the circuit court was obligated to vacate the award under section 12(a)(5) of the Uniform Arbitration Act (710 ILCS 5/12(a)(5) (West 2010)), which requires an award to be vacated when there is no arbitration agreement. Marci pointed out that she had never signed the arbitration agreement, and she also submitted an affidavit attesting that she had not participated in the arbitration hearing in any way. She also claimed that Piltz had pursued the appeal without her permission. In fact, she attested that she had never spoken to Piltz at all. For his part, Marc argued that the complaint should be dismissed as to him because the arbitration award was only directed against Marci.

¶6 The circuit court sided with the Siebzeners and dismissed the complaint, though without prejudice. Plaintiff then amended its complaint twice, and the second amended

complaint is the one that is now at issue. In addition to asking for confirmation of the arbitration award as well as an accounting and imposition of a constructive trust against the Siebzeners, plaintiff added Piltz as a defendant. The complaint also added a host of alternative claims, including fraud, negligent misrepresentation, estoppel, civil conspiracy, and unjust enrichment. In these claims, plaintiff essentially contended that throughout the arbitration process the Siebzeners had represented (at times through Piltz, their attorney) that they both would be subject to the jurisdiction of the arbitrators and would both abide by the arbitrators' decision. Marci, however, had now disclaimed in a sworn affidavit that Piltz ever spoke for her and she attested that she had never consented to arbitration, and Marc now claimed that the arbitration award did not apply to him. Plaintiff alleged that because Horowitz relied on the Siebzeners' apparently false assurances of compliance, he did not seek clarification of either the arbitration agreement or the arbitration order in a way that would ensure later enforceability by a court against both of the Siebzeners.

¶7 Each of the defendants again moved to dismiss, and the circuit court rejected each of plaintiff's claims and dismissed the complaint. Plaintiff now appeals.

¶8 We review dismissal of a complaint *de novo*. See *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Our analysis begins and ends with section 12 of the Uniform Arbitration Act (710 ILCS 5/12 (West 2010)). As Marci points out, the Act requires a court to vacate an arbitration award when "[t]here was no arbitration agreement," (710 ILCS 5/12(a)(5) (West 2010)), and her signature certainly does not appear on either of the two copies of the arbitration agreement in the record. But the statute goes on to state that a petition to vacate an award for any of the grounds listed in section 12, which includes situations where there was no arbitration agreement, "shall be made within 90 days after

delivery of a copy of the award to the applicant." 710 ILCS 5/12(b) (West 2010). In the absence of a timely challenge, an arbitration award must be confirmed by the circuit court. See *Mid-America Regional Bargaining Association v. Modern Builders Industries Concrete Co*., 101 Ill. App. 3d 83, 86 (1981); 710 ILCS 5/11 (West 2010) (confirmation of arbitration awards).

¶9 Marci acknowledges that she failed to comply with the 90-day deadline but contends that the Act applies only to parties to an arbitration agreement. Because she did not sign an arbitration agreement and did not participate in the arbitration hearing, Marci argues that, as a nonparty to the agreement, she is therefore exempt from the 90-day deadline and may challenge the award at any time. But this argument makes no sense in light of the plain terms of the statute. Section 12(a)(5) expressly addresses situations like this one where there is no arbitration agreement, and section 12(b) expressly imposes a 90-day limit on attempts to vacate an award on the grounds listed in section 12(a). At this point in the proceedings, it makes no difference whether Marci was a party to the arbitration agreement because the arbitrators entered judgment against her. Had she challenged the order within 90 days as the Act requires, then we would have a different case.

¶10 But she did not, so instead we have a case that is functionally identical to *Mid-America*. In that case, the plaintiff won an arbitration award against the defendant and sought to confirm it in the circuit court. The defendant claimed that the award should be vacated because there was no arbitration agreement between it and the plaintiff, yet the defendant did not raise this defense until seven months after it had received notice of the arbitration award. We held that "[i]t is clear that under [section 11 of the Act] the court has no discretion but must confirm the award unless defenses are raised within ninety days from

delivery of the award or, if corruption, fraud or other undue means are alleged, within ninety days after such grounds are known or should have been known. Since no defenses were raised within the ninety day period the trial court was required to confirm the award." *Id.* at 88. The situation is the same here. Marci failed to raise her claim that there was no arbitration agreement within 90 days of the arbitration order, and so the circuit court had no option but to confirm the arbitration order as to Marci.

¶ 11 The result is the same for Marc. He acknowledges that he too failed to challenge the arbitration order within 90 days, but he contends that it should be vacated or dismissed because it does not order him to do anything. Leaving aside for the moment the scope of the award, Marc's position is irrelevant to the question of confirmation. Whether an arbitration award should be confirmed is a different issue than what judgment the circuit court must impose based on that award. Section 11 of the Act states that "[u]pon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 12 [grounds for vacating] and 13 [grounds for modifying]." 710 ILCS 5/11 (West 2010). But Marc concedes that he did not challenge the award within the time limits set out in sections 12 and 13. Without a timely challenge, the circuit court was required to confirm the award with respect to Marc.

¶ 12 The judgment that must be imposed against Marc, Marci, or both is a separate question. Once an arbitration award has been confirmed, "judgment shall be entered in conformity therewith and be enforced as any other judgment." 710 ILCS 5/14 (West 2010). The arbitration award clearly directs Marci to either renew the contract with Haven Management or to split the profits from the new entity with Horowitz. And yet, as the

circuit court observed, Marc was not explicitly directed to do anything by the arbitration panel. Given that plaintiff did not seek a modification or correction of the award under section 13 within 90 days, the circuit court is bound to enter judgment on the award as written, though the terms of the award are not as clear as they could be and therefore may require some interpretation. Moreover, plaintiff has alleged in its complaint that Marc agreed to comply with the award. Whether the terms of the arbitration award or Marc's alleged promises are sufficient to hold him either individually liable for the award or jointly and severally liable for any judgment imposed against Marci is a question that the circuit court must resolve on remand. The circuit court must also determine the extent of the judgment against Marci, which was a question that the circuit court did not reach.

¶ 13 Because the circuit court should have confirmed the award, it was also necessarily incorrect to dismiss the count of the complaint seeking an accounting and a constructive trust. Whether this count should continue to stand is something that can be addressed on remand if necessary.

¶ 14 The remaining issue is the counts that plaintiff pled in the alternative, which include the counts directed against Piltz. As they were pled in the complaint, these counts were viable only in the event that the arbitration award was vacated. But the award must be confirmed, so the counts are moot and we need not consider them. We accordingly dismiss that portion of the appeal as moot.

¶ 15 Reversed in part and appeal dismissed in part; cause remanded with directions.