

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000400-MR

NCO PORTFOLIO MANAGEMENT, INC.

APPELLANT

v.

APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
ACTION NO. 06-CI-00061

STEPHANIE RICE, A/K/A/ STEPHANIE
HILL, MEADE, L. MEADE, LYNN RICE,
AND L. HILL

APPELLEE

OPINION REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: ACREE AND LAMBERT, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

LAMBERT, JUDGE: NCO Portfolio Management, Inc., appeals the dismissal of its action to confirm an arbitration award in its favor against Stephanie Rice for unpaid credit-card debts. For the reasons stated herein, we reverse the judgment below.

¹ Senior Judge Paul W. Rosenblum, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and KRS 21.580.

Here, NCO brought this action to confirm an arbitration award against Rice for unpaid credit-card debts in the amount of \$16,235.55. In its written opinion dismissing the petition, the circuit court implicitly *assumed without deciding* that: (1) NCO is Rice's legitimate creditor; (2) the parties are bound by a valid arbitration agreement; and (3) Rice received notice of arbitration. Based on these unstated presuppositions, the circuit court *held* that the notice of arbitration is invalid under KRS 417.090, as it failed to state a time and place for an arbitration hearing. See KRS 417.090(1) (requiring time-and-place notice). The sole issue before us is whether the statutory procedures set forth in KRS 417.090 are applicable. No other issue is fully and squarely before us, and we therefore decline to reach any other issue suggested to us by either party.

We review questions of arbitration law *de novo*. See e.g., *Conseco Financial Services Corp. v. Wilder*, 47 S.W.3d 335, 340 (Ky.App. 2001). And, under KRS 417.090, a notice of arbitration must state the time and place of the arbitration hearing, “***unless otherwise provided by the [arbitration] agreement.***” See KRS 417.090 (prefatory language emphasized.) Here, the circuit court simply overlooked the “*unless otherwise provided*” clause set out in the prefatory language of the statute. The credit card agreement, which the court assumed to be binding on the parties, expressly indicates that arbitration is to be governed by the National Arbitration Forum's (NAF) Code of Procedure, which sets forth different notice and hearing procedures than those contained in KRS 417.090.

Thus, as the circuit court assumed this agreement to be binding on the parties, it would necessarily follow that NCO would *not* be required to follow the time and place notice procedures provided in KRS 417.090, but rather those “otherwise agreed,” which are the NAF notice procedures. And here, the notice of hearing procedures of the NAF Code of procedures was properly followed. Thus, unlike the circuit court, we hold that the statutory procedures set forth in KRS 417.090 do not apply. We reverse and remand this case to the trial court with directions to confirm and enforce the arbitration award.

ACREE, JUDGE, CONCURS.

ROSENBLUM, SENIOR JUDGE, CONCURS IN RESULT.

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