

**IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT IN AND FOR  
ORANGE COUNTY, FLORIDA**

**CASE NO.: CVA1 08-14**

County Court Case No.: 48-2005-CC-011293

**ELAINE J. HUTCHINSON,**

Appellant,

v.

**MBNA AMERICA BANK, N.A.,**

Appellee.

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Appeal from the County Court,  
For Orange County,  
Nancy L. Clark, County Judge.

Eric L. Bolves, Esquire,  
for Appellant.

Richard Battaglino, Esquire,  
for Appellee.

Before POWELL, EVANS, T. SMITH, J.J.

PER CURIAM.

**FINAL ORDER AFFIRMING LOWER COURT**

Appellant Elaine Hutchinson timely appeals the lower court's Order Confirming Arbitration Award, entered January 15, 2008, and Final Judgment in favor of Appellee MNBA America Bank, also entered January 15, 2008. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Appellant asserted in her affidavit of objections to the motion to confirm and now contends in her initial brief that her husband, now deceased, was solely liable on the credit card

agreement. She further asserts that there is no evidence of any application, credit card, or charge slip, signed by her. For the reasons expressed below, this Court affirms the lower court's orders.

This case is governed by Chapter 682 of the Florida Statutes, also known as the Florida Arbitration Code. Cases decided under the Florida Arbitration Code have strictly and uniformly held that if a party does not file a motion to vacate or other challenge within ninety days of the date of the delivery of the arbitrator's award, a trial court does not have discretion to amend the arbitrator's award and it must confirm the award. See Carter v. State Farm Mut. Auto. Ins. Co., 224 So. 2d 802 (Fla. 1st DCA 1969); Lopez & Roque Tile Co. Inc. v. Clearwater Dev. Corp., 291 So. 2d 126 (Fla. 2d DCA 1974); Travelers Ins. Co. v. Allen, 356 So. 2d 1287 (Fla. 3d DCA 1978); Haskell v. Forest Land and Timber Co., 408 So. 2d 811 (Fla. 1st DCA 1982); Mead v. Lumbermans Mut. Cas. Co., 423 So. 2d 908 (Fla. 1982); Moya v. Bd. of Regents, 629 So. 2d 282 (Fla. 5th DCA 1993); Am. Reliance Ins. Co. v. Devecht, 820 So. 2d 378 (Fla. 4th DCA 2002).

The arbitrator's award was delivered to Appellant on or about February 28, 2005. Appellant never filed a motion to vacate, modify, or correct the award.<sup>1</sup> Her challenge to the arbitrator's award was in the form of an affidavit of objections filed on June 11, 2007, more than two years after the date of delivery of the award. Consequently, we find that the lower court was correct in disregarding Appellant's affidavit, confirming the arbitration award, and entering final judgment in favor of Appellee.

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<sup>1</sup> We went further than necessary and reviewed Appellant's contentions in her brief. Even if Appellant had timely filed a motion to vacate, we find those contentions to be without merit. Appellant participated in the arbitration by filing with the arbitrator an answer raising the issue of whether a binding agreement existed, and the arbitrator ruled against her on that point. The arbitrator did not exceed his powers by deciding that issue because it was pertinent to the resolution of the matter submitted for arbitration. The mere fact that Appellee or its attorney broke their promise to furnish Appellant with a copy of documentary proof does not rise to the level of corruption, fraud, or undue means sufficient to vacate an award. Finally, no transcript or record of the arbitration proceeding has been furnished, and even if it had been, this Court cannot review the sufficiency of the evidence or the arbitrator's findings of fact. This Court cannot substitute its judgment for that of the arbitrator. While we sympathize with Appellant, she should have retained an experienced attorney immediately upon receiving the demand for arbitration.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the lower court's Order Confirming Arbitration Award and Final Judgment, entered on January 15, 2008, are **AFFIRMED**.

**DONE AND ORDERED** at Orlando, Florida this \_\_25\_\_ day \_\_\_\_\_November\_\_\_\_\_, 2009.

\_\_\_\_\_/s/\_\_\_\_\_  
**ROM W. POWELL**  
**Senior Judge**

\_\_\_\_\_/s/\_\_\_\_\_  
**ROBERT M. EVANS**  
**Circuit Judge**

\_\_\_\_\_/s/\_\_\_\_\_  
**THOMAS B. SMITH**  
**Circuit Judge**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing order was furnished via U.S. mail on this \_\_25\_\_ day of \_\_\_\_\_November\_\_\_\_\_, 2009, to the following: **Eric L. Bolves, Esquire**, 2110 East Robinson Street, Orlando, FL 32803 to **Richard Battaglino, Esquire**, 1045 South University Drive, Suite 202, Plantation, FL 33324.

\_\_\_\_\_/s/\_\_\_\_\_  
Judicial Assistant