

IN THE SUPREME COURT OF OHIO

09-1053

Penny J. Young,

Appellant,

v.

FIA CARD SERVICES, N.A.
Formerly known as
MBNA AMERICA BANK, N.A.
2727 Paces Ferry Road, #1400
Atlanta, GA 30339,

Appellee.

On Appeal from the
Knox County Court of Appeals,
Fifth Appellate District

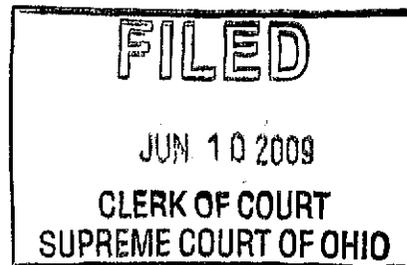
Court of Appeals
Case No. 08CA22

MEMORANDUM IN SUPPORT OF JURISDICTION

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COUNSEL FOR THE APPELLEE

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EXPLANATION WHY THIS CASE IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST AND
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This cause presents several critical issues which could have a lasting and adverse effect on future claims and transactions between consumers and lending institutions, particularly in the adjudication of such claims on the following issues of law:

- (1) whether *pro se* litigants shall be provided due process of law and equal protection of the law when seeking judicial relief in actions involving financial institutions;
- (2) whether, in the execution of judicial discretion, Ohio courts can usurp jurisdiction over matters preserved to federal courts by the constitution of the United States;
- (3) whether an arbitration forum has proper authority to exercise jurisdiction, move forward with arbitration proceedings, and render a valid arbitration award when the validity of the relevant arbitration agreement has been challenged by a party to the action and the question pertaining to such validity remains unanswered by a competent court of law;
- (4) whether foreign corporations and other fictitious entities can have standing to bring an action in Ohio courts without satisfying Ohio's laws pertaining to licensing and registration with the Ohio Secretary of State's office;
- (5) whether actions brought in Ohio courts by parties lacking sufficient standing constitute fraud on the court or abuse of judicial process;
- (6) whether actions brought in Ohio courts for confirmation of arbitration awards perpetrated in violation of due process of law constitute fraud upon the court;

- (7) whether judges who fail to uphold the letter of the law, and when rendering decisions in actions for which jurisdiction remains an unanswered question, constitutes an abuse of judicial discretion subject to disciplinary action;
- (8) whether failure of an Ohio judge to render findings of fact and conclusions of law for its decision, when such findings and conclusions are requested and relevant to a party's basis for appeal, constitutes a dereliction of judicial duty and a denial of due process.

In the instant action at the trial court and on appeal, the courts failed to take judicial notice and cognizance of material facts and law that were controlling in the action and critical to the Appellant's defense. As a result of the court's failure to acknowledge such critical provisions of clearly established law, a fraud (in the factum and by deception) was perpetrated on and compounded by the courts in deprivation of the Appellant's rights to due process and equal protection of the law.

Further, the said courts failed to acknowledge that the Appellee lacked standing to bring suit in an Ohio court as a result of the Appellee, an entity foreign to Ohio, failing to satisfy Ohio laws for licensing and registration.

Further, the said courts failed to acknowledge that the instant action is a matter of federal jurisdiction (interstate commerce and diversity of citizenship), and there was no private authority granted by the parties or the state to bring said action in an Ohio court.

Further, the said courts failed to acknowledge or establish on the record of the court that a proper and valid agreement, and relevant arbitration award, existed upon which the court could rely to render a decision.

Appellant contends that the stated abuses by the said courts and the Appellee deprive the Appellant protections secured and guaranteed by the constitutions of Ohio and of the United States. Continued behavior in like manner would adversely affect the peoples' confidence in the integrity of the judiciary and the peoples' right to find relief within the systems of justice so established. Indeed, such behavior reflects that of despotism and not a system founded upon the rights and liberties of the individual and good government. Appellant contends that, without the proper and just administration of the judicial authority in compliance to its laws, financial institutions would operate unfettered and without worry that their claims, no matter how preposterous or abusive, would always be granted in their favor.

These matters affect every consumer who falls victim to the abuses perpetrated upon them by financial institutions who expect that most consumers will not challenge their claims. The people, generally, have suffered from numerous such abuses: predatory lending, fraudulent bookkeeping, manipulation of funds, deception, misinformation, etc. Further, with our current economic system, nearly all average people are forced to do business with these financial institutions in order to start businesses, buy homes and automobiles, finance education, and to provide sufficient immediate funding necessary to finance other important matters. This is required simply because the cost of such necessities is far beyond the financial resources which are immediately available to most people. It is reasonable to assume that the burdens of debt involve nearly every member of our society.

In exercise of the State's delegated authority to protect consumers from such abuses, the Ohio legislature has enacted laws in compliance with the constitutions that specifically address these matters and affords consumers with necessary protections. Additionally, Congress has enacted similar consumer protection laws, many of which are reflected in

Ohio's laws, with very similar language. With regard to the controlling issues in the instant action, extending primarily around the validity of an arbitration agreement, the law is clear that determination of a question of validity is a matter of the judiciary and not for an arbitration forum to decide. And, when challenged, the question of validity of the arbitration agreement must be properly determined before the arbitration forum can proceed with its proceedings or issue an award. This important provision and protection of law has been completely ignored in the instant action.

The other issues brought forward in this appeal have to do with abuses perpetrated by the judiciary with respect to the instant action. Ohio has well established rules and codes of conduct for judges and attorneys for purposes of preserving and maintaining the integrity of Ohio courts. Further, the very nature of our system of governance clearly establishes limits of jurisdiction and authority by and within which the courts must limit its operations.

The judgment entries entered into this action by the trial court and Court of Appeals demonstrate numerous abuses and usurpation of governmental powers, the most notable of which are violations of the due process of law and equal protection of the law against the Appellant. In these united States of America, government exists solely at the discretion and for the benefit of the people who comprise, participate in, and share common allegiance to our society. It is of utmost importance that, in the exercise of its delegated powers and authorities, government operates within the limitations set forth by the people, providing protection, security, and remedy in law for the peoples' rights and liberties. A necessary component to the peoples' protections is the ability to rely on duly established law properly exercised and applied by our courts. When the rule of law fails, then the rule of men supersedes and results in arbitrary justice.

It is of paramount interest and concern to the general public that the lawful provisions set forth for government be strictly maintained. Violations against the people by those serving in the public trust would constitute a breach of fiduciary responsibility and crimes against the government duly established for the peoples' equal protection.

The Supreme Court of Ohio has promulgated rules to which officers of the court must conform in order to preserve and maintain the integrity of the judiciary. It is of great public and general interest that the integrity of the judiciary be preserved and maintained to its high standards of conduct in order to preserve justice and fairness in adjudication of the law. Failure of the judiciary to adequately maintain its integrity would result in injury and trespass on the people and their property.

In the instant action before this court, the Appellant's rights to due process and equal protection of the law have been compromised in numerous ways. Whereas the decisions of the Supreme Court of Ohio are controlling upon all courts in Ohio, failure of this court to uphold the rights of the Appellant would set a precedent for future injuries to be exercised against others with similar circumstances. This Supreme Court has an expressed duty, pursuant to the Ohio constitution at Art. IV, Sect. 2(B)(2)(a)(iii) and 2(B)(2)(e), of appellate jurisdiction for cases involving questions arising under the constitution and matters of public or great general interest. Such authority is further set forth in the *Rules of Practice of the Supreme Court of Ohio* at S.Ct.Prac.R. II(1)(A)(2) and II(1)(A)(3). Additionally, the peoples' rights to be heard and to seek remedy are preserved in the Ohio Constitution at Art. I, Sect. 16. Appellant hereby invokes the power and authority of this Supreme Court and seeks such remedy.

In summary, Appellant adamantly contends that her substantive rights have been violated by the Appellee (and its attorney) and abrogated or deprived by the National Arbitration Forum and arbitrators, the trial court and Court of Appeals. Such abuses are fully and clearly exposed and documented in the Appellant's case documents. Appellant appeals to Justices of this Supreme Court to render due diligence to the instant case and uphold the rule of law in compliance with your solemn oaths to do so. Appellant is confident that the facts and law presented are sufficient to grant Appellant the relief sought.

STATEMENT OF THE CASE AND FACTS

This case arose upon an application by the Appellee for confirmation of an arbitration award, pursuant to R.C. § 2711.09. Remedy was sought in the form of an Order to confirm said arbitration award against the Appellant. Appellant objected to the Appellee's said application and demanded the said award be vacated on the legal basis that the subject arbitration agreement and award are invalid. The arbitration forum granted the said arbitration award without legal authority resulting from Appellee's failure to present the question of validity of the arbitration agreement to a judicial court for determination.

The following chronological facts accurately describe the sequence of relevant events in this case. Notice is hereby given that "*Opinion*", as used herein, denotes the opinion rendered by the Court of Appeals and attached hereto as Exhibit "A".

- (1) On February 13, 2007 Appellant served Appellee with *Notice and Demand for Validation and Adequate Assurance of Performance – Penny J. Young, Account # XXXX XXXX XXXX 4998* pertaining to a credit card account presumed, at the

moment of application, to be entered into in good faith by Appellee. (See Appellant's Brief, Exhibit "E")

- (2) Appellee failed to adequately respond to said notice and demand.
- (3) On September 5, 2007 the National Arbitration Forum served Appellant with *Second Notice of Arbitration*.
- (4) On September 17, 2007 Appellant served Appellee and the National Arbitration Forum with a *Notice of Dispute* which clearly challenged the validity of the relevant arbitration agreement. (See Appellant's Brief, Exhibit "F")
- (5) On December 20, 2007 Appellant served Appellee with a *Formal Request for Account Information*, which went substantially unanswered by the Appellee. (See Appellant's Brief, Exhibit "G")
- (6) On January 28, 2008, the National Arbitration Forum entered an arbitration award in favor of Appellee and against Appellant. (Fact conclusive as evidenced at {¶ 3} of *Opinion*)
- (7) On June 11, 2008, Appellee filed a motion and application to confirm the said arbitration award in the Court of Common Pleas for Knox County, Ohio, pursuant to R.C. § 2711.09. (Fact conclusive as evidenced at {¶ 4} of *Opinion*)
- (8) On June 16, 2008, Appellant filed a *Respondent's Opposition to Claimant's Application and Motion to Vacate and Dismiss* in the common pleas court. (Fact conclusive as evidenced at {¶ 5} of *Opinion*). Appellant hereby notices this court that said motion challenged the trial court's jurisdiction and validity of the arbitration award and went unanswered by the trial court.

- (9) By judgment entry filed July 17, 2008, the trial court granted Appellee's motion to confirm the subject arbitration award. (Fact conclusive as evidenced at {¶ 6} of *Opinion*)
- (10) Appellant filed an appeal in the Court of Appeals of Knox County, Ohio Fifth District, from the judgment entry of the trial court entered on July 17, 2008.
- (11) The Court of Appeals entered its *Opinion* and judgment entry on April 27, 2009.
- (12) The Court of Appeals affirmed the trial court's judgment entry for reasons stated in its Memorandum-Opinion (the subject *Opinion*).
- (13) The Court of Appeals found:
 - (a) The trial court had personal and subject-matter jurisdiction;
 - (b) The trial court had authority to grant the Appellee's application for confirmation of the arbitration award;
 - (c) The Appellant's motion to vacate was untimely;
 - (d) The trial court had no authority to address questions of fact and law under Civ.R. 52 which apply to cases of binding arbitration (a misinterpretation by the court of Appellant's Civ.R. 52 motion);
 - (e) Fraud was not at issue.
- (14) Appellant contends that the statements of the Court of Appeals, as evidenced in its *Opinion*, clearly demonstrate that matters of record pertaining to relevant fact and law, material and controlling in the instant action, were not provided adequate cognizance by the court, misinterpreted, or unduly misapplied to render extraordinary meaning to the detriment of Appellant's defense.
- (15) Appellant hereby files for appeal from said *Opinion* and judgment entry.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Notice – Due to the constraints promulgated at S.Ct.Prac.R. III(1)(C) limiting this memorandum to a maximum of 15 pages, Appellant chooses to herein preserve the stated legal authorities, upon which she relies, by reference, only.

Proposition of Law No. 1: When the validity of an arbitration agreement has been challenged, the arbitration forum lacks authority to move forward with arbitration proceedings until the question of validity of the arbitration agreement has been decided by a court of competent jurisdiction. Further, the arbitration forum and the arbitrators lack authority to determine the question of validity of a challenged arbitration agreement.

- (16) Pursuant the *Uniform Arbitration Act*, Section 2(a) and the arbitration laws of the United States, codified at 9 USC §§ 1-16 (particularly, at 9 USC § 4), challenges to the arbitration agreement must be decided by a court prior to the arbitration forum moving forward with arbitration proceedings.
- (17) The language at 9 USC § 4 is accurately and harmoniously reflected in Ohio law at R.C. § 2711.03 for arbitration proceedings which fall within Ohio jurisdiction.
- (18) The issue of determining the question of validity of an arbitration agreement, before moving forward with arbitration proceedings, was clearly settled in several court decisions upon which Appellant relies. See *MBNA AMERICA BANK v. CREDIT*, 281 Kan. 655 (2006), 132 P.3d 898; *MBNA AMERICA BANK v. AARON KAY*, 888 N.E.2d 288 (Ind.App. 2008).
- (19) Appellee had a duty to seek a determination from a court of competent jurisdiction to determine the validity of the relevant arbitration agreement, which was, in fact, challenged by the Appellant. (See Appellant’s Brief, Exhibits “E” and “F”).
- (20) By operation of law, the National Arbitration Forum lacked authority to render a determination or award in the instant action, hence the subject arbitration award is void.

Proposition of Law No. 2: When an arbitration forum lacks authority to arbitrate due to an unanswered challenge by a court upon the validity of the arbitration agreement, all proceedings and awards rendered by such arbitration forum are necessarily void and without legal force and effect, constituting a sham legal process, and renders the perpetrators subject to pains and penalties under federal and state laws. Further, the court has no authority to confirm an invalid arbitration award.

- (21) The law is well established that an order, judgment, decision, opinion, or award rendered by a court without jurisdiction and authority is void and without legal force and effect. Such renderings are considered a nullity in law. See *Elliot v. Piersol*, 1 Pet. 328, 240; 26 U.S. 328, 340 (1840); *Triad Energy Corp. v. McNell*, 110 F.R.D. 382 (S.D.N.Y. 1986); *Eckel v. MacNeal*, 628 NE2d 741 (Ill.App.Dist. 1993); *STATE v. SIMPKINS*, 117 Ohio St.3d 420 (2008); 884 NE2d 568.
- (22) Because the subject arbitration award rendered by the National Arbitration Forum was without authority, said arbitration award is necessarily void, without legal force or effect, a nullity in law.
- (23) The subject arbitration award: (1) was not lawfully issued, (2) constituted a judgment by a court/tribunal, (3) and designed to make another person believe that it was lawfully issued. Therefore said arbitration award qualifies as a “Sham legal process”, pursuant to R.C. § 2921.52(A)(4), and constitutes a deprivation of Appellant’s rights under color of law in violation of 42 USC § 1983 and 18 USC §§ 241-242.
- (24) If an arbitration award is necessarily void as a matter of law, then a court has not authority to consider the said award as valid for confirmation purposes. See *MBNA AMERICA BANK v. AARON KAY*, *supra*.
- (25) Silence by the Appellee and Appellant, and their failure to challenge the validity of the arbitration award, cannot render a void arbitration award as valid. See *Davis v. Paige*, 2008-Ohio-6415.

(26) Ohio courts have recognized and taken judicial cognizance of case decisions that specifically state that the three-month period, as stated at R.C. § 2711.13, for challenging an arbitration award in the courts only applies when a valid arbitration award is before the court. See *CITIBANK v. WOOD*, 2008-Ohio-2877.

Proposition of Law No. 3: A court cannot possess subject-matter jurisdiction in an action where *in rem* jurisdiction over the subject instrument has not been perfected due to the said instrument being necessarily void.

(27) *In Rem* jurisdiction is the court's authority over the "thing" before the court upon which the action is subject. See *Black's Law Dictionary, 5th Edition*, pg. 713.

(28) Appellant contends that since the arbitration award constitutes the primary "object" of interest before the court, then it qualifies as the "thing" in controversy.

(29) Appellant contends that since the arbitration award constitutes the "object" of the action and that confirmation thereof constitutes the "subject", then subject-matter jurisdiction is denied when the object in controversy is void and has no legal force or effect.

Fundamentally, the court cannot render confirmation upon an invalid arbitration award.

Proposition of Law No. 4: The provisions of 12 USC 24 creates no duty on Ohio courts or standing to sue for National Banks in violation of Ohio laws pertaining to foreign corporations. Similarly, R.C. § 2711.09 cannot grant authority over a National Bank in violation of the "Foreign Corporation" provisions at R.C. § 1703 of the revised code.

(30) Provisions of law enacted by Congress governing Federal Banks, particularly at 12 USC § 24, are to be interpreted in compliance with the limited scope of federal powers and authorities as delegated in compliance with the federal Constitution, and such laws do not generally operate upon the State unless express provisions to such have been duly incorporated within the Congressional enactment. No such authority exists. Such authority by Congress would render all State laws restricting operations by foreign corporations, such as at R.C. § 1703, as moot.

(31) Laws enacted by the Ohio legislature, unless expressly provided otherwise, are limited in scope to imply jurisdiction solely within Ohio, such jurisdiction which includes adjudication and application of the laws by Ohio courts.

(32) Appellee does not qualify as “any party”, pursuant to R.C. § 2711.09, due to the fact that Appellee fails to satisfy the constraints on foreign corporations imposed at R.C. § 1703.29(A), *supra.*, regarding licensing; failed to bring an action founded upon a valid arbitration agreement; failed to bring a valid controversy (arbitration award) before the court; and perpetrated a sham legal process (fraud) upon the court. Appellant contends that the instant action should have been dismissed as a legal nullity, *ab initio*.

Proposition of Law No. 5: Violations of Ohio law R.C. § 1703 pertaining to the licensing and registration of foreign corporations (entities) creates an absolute bar against them bringing civil suit in an Ohio court.

(33) Appellee, in fact, is a “foreign association” as evidenced by its title (*FIA CARD SERVICES, N.A.*) and pursuant to R.C. § 1703.01(B), created under the laws of the State of Delaware, and as such is foreign to Ohio and must comply with the provisions of R.C. § 1703, particularly R.C. § 1703.29(A), prohibiting an unlicensed foreign corporation from bringing an action in an Ohio court.

(34) Appellant attests that there exists no information on the record of the court that evidences that Appellee has complied with the stated provisions of Ohio law. This matter has been adamantly challenged by Appellant, without opposition.

(35) Ohio laws pertaining to foreign corporations apply equally to foreign associations (entities), pursuant to R.C. §§ 1701.01(B), 1701.01(E), and 1729.76.

Proposition of Law No. 6: An Ohio court cannot acquire nor usurp jurisdiction over an action where the claimant lacks standing, pursuant to Ohio law, to bring an action in an Ohio court.

- (36) Jurisdiction, being the authority of the court to adjudicate an action (whether over the thing, person, subject matter, territory, etc.), cannot be usurped or bestowed by the court without violation of a party's right to due process of law. See *U.S. v. Will*, 449 US 200, 216; 101 S.Ct. 471; 66 LEd.2d 392, 406 (1980); *Cohens v. Virginia*, 19 US (6 Wheat) 264, 404; 5 LEd. 257 (1821).
- (37) Appellant maintains that the federal and Ohio constitutions protect her rights, always, from encroachment from individuals or government. See *DeRolph v. State of Ohio*, 97 Ohio St.3d 434 (2002) – (*DeRolph IV*).
- (38) Appellant contends that, though Appellee asserted a potential claim for damages, Appellee lacked sufficient social standing to sue as a matter of right and lacked a judiciable object (void arbitration award) upon which to rely for its claim, and by operation of law, was barred from bringing an action in an Ohio court.

Proposition of Law No. 7: Statements within a private alleged arbitration agreement clearly stating that the matters related thereto are in interstate commerce and shall be controlled under federal law, requires questions of law pertaining thereto to be decided solely in a federal court or such other court agreed upon within that instrument.

- (39) The alleged arbitration agreement upon which the Appellee relies in this instant case specifically states that it pertains to matters of interstate commerce and shall be governed by federal law or the laws of Delaware. (See Respondent's motion in the trial court to vacate and dismiss, pages 7 and 8 of Respondent's Exhibit "C")
- (40) Because there is no authority in the alleged private arbitration agreement to bring an action in an Ohio court, this instant action could not be brought in such court pursuant to R.C. § 2307.39.

Proposition of Law No. 8: Judges and attorneys have a paramount duty to know and adhere to the law and conduct themselves in compliance with a high moral standard in their official or professional capacities, violation of which constitutes a clear violation of the adversely affected party's rights to due process and equal protection of the law, rendering such offenders liable for disciplinary actions, sanctions and suit.

- (41) The conduct of Ohio judges and attorneys are governed by rules and codes promulgated by the Supreme Court of Ohio and state laws. See *Ohio Constitution, Ohio Revised Code, Rules for the Government of the Judiciary of Ohio, Ohio Code of Judicial Conduct, Ohio Rules of Professional Conduct*, the Ohio rules of court, Office of Disciplinary Counsel, and others.
- (42) So necessary and paramount is a judge's duty for maintaining the integrity of the judiciary and upholding the laws of Ohio, every Ohio judge must subscribe to an official oath of office solemnly binding him to his duty. See *Constitution of the State of Ohio*, Art. XV, Sec. 7 and R.C. § 3.23
- (43) A judge, who violates his oath of office, breaches his fiduciary duty and the public trust, bringing war against the Constitution. See *Cooper v. Aaron*, 358 US 1; 78 S.Ct. 1401 (1958).
- (44) Actions perpetrated or allowed by judges and/or attorneys with knowledge and in violation of due process, with intentional misrepresentation or falsification, and with the intent to deprive a party in suit of his substantive rights, constitutes fraud upon and by the court. See *Gaines v. Preterm-Cleveland, Inc.*, 33 Ohio St.3d 54 (1987), 514 N.E.2d 709.
- (45) Judges who fail to perform their duties and responsibilities mandated by law are in dereliction of their official duty, pursuant to R.C. § 2921.44.

(46) Judges and attorneys have no immunity from liability in their personal capacities when their actions result in harm or injury to another and are outside the scope of their official or professional duties, pursuant to R.C. § 9.86.

Proposition of Law No. 9: Decisions entered by a judge on the court record without careful and exhaustive consideration of all relevant, material, and controlling facts or in opposition to duly established laws prejudices the adversely affected party's rights to due process of and equal protection of the law.

(47) In all actions where facts are to be considered by the court, the court must provide a thorough assessment of all the material facts. See *WILSON v. SEMCO, INC.*, 152 Ohio App.3d 75 (2002); 786 NE2d 906.

(48) Failure of the court, when deciding upon the facts and law of an action, to consider all material elements on the record would clearly deprive a party their rights of due process and constitute an abuse of judicial discretion resulting from an unreasonable, arbitrary, or unconscionable decision and judicial misconduct.

CONCLUSION

For the reasons stated herein, this case involves issues of public and great general interest and a substantial constitutional question. Appellant hereby respectfully requests that this court accept jurisdiction over this case to adjudicate the said issues on their merits and preserve the integrity of the judiciary. Appellant seeks relief in the form of an Order from this court to vacate the subject arbitration award and associated judgment entries from the trial court and Court of Appeals, as void, *ab initio*, and without legal force or effect.

Respectfully submitted,

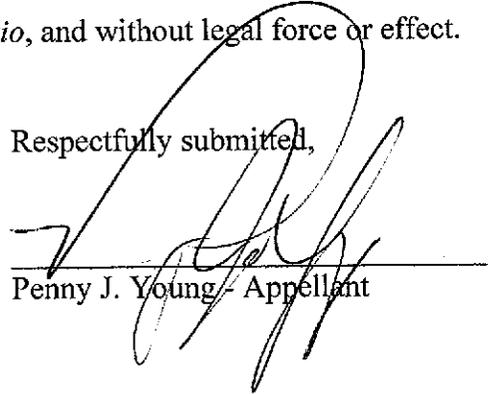
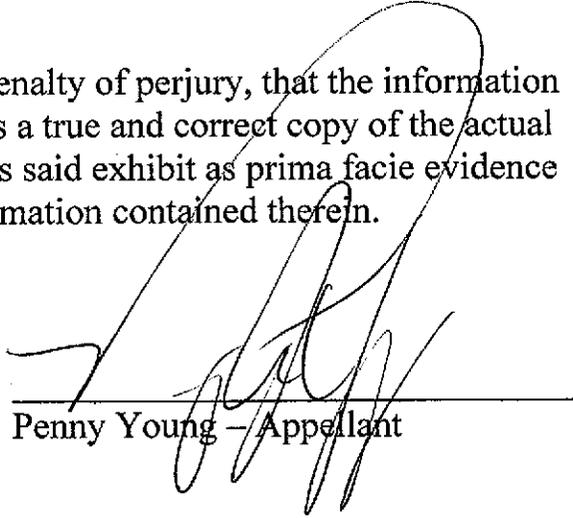

Penny J. Young - Appellant

EXHIBIT "A"

Opinion of the Knox County Court of Appeals

Appellant hereby confirms, under penalty of perjury, that the information presented in the following exhibit is a true and correct copy of the actual document. Further, Appellant offers said exhibit as prima facie evidence with respect to the information contained therein.



Penny Young – Appellant

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED

APR 27 2009

COURT OF APPEALS
KNOX COUNTY, OHIO

FIA CARD SERVICES, N.A. fka MBNA
AMERICA BANK, N.A.

Plaintiff-Appellee

-vs-

PENNY YOUNG

Defendant-Appellant

JUDGES:

Hon. John W. Wise, P.J.
Hon. Julie A. Edwards, J.
Hon. Patricia A. Delaney, J.

Case No. 08 CA 22

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Case No. 08OT06-0356

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

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Wise, P. J.

{¶1} Appellant Penny J. Young appeals the decision of the Knox County Court of Common Pleas

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant Penny J. Young opened a credit card account with Appellee FIA Card Services, N.A., fka MBNA America Bank, N.A. Appellant subsequently defaulted on the account. Pursuant to the credit card agreement, Appellee submitted its claim to the National Arbitration Forum.

{¶3} On January 28, 2008, the National Arbitration Forum entered an arbitration award in favor of Appellee and against Appellant in the amount of \$11,119.76.

{¶4} On June 11, 2008, Appellee filed a motion and application to confirm the arbitration award in the Court of Common Pleas for Knox County, Ohio, pursuant to R.C. §2711.09.

{¶5} On June 16, 2008, Appellant filed an Opposition and Motion to Vacate and Dismiss in the common pleas court.

{¶6} By judgment entry filed July 17, 2008, the trial court granted Appellee's motion to confirm the arbitration award.

{¶7} Appellant filed an appeal and this matter is now before this Court for consideration. Appellant assigns the following errors for our review:

ASSIGNMENTS OF ERROR

{¶8} "I. (IN PERSONAM JURISDICTION) APPELLANT CONTENDS THAT THE TRIAL COURT ERRED IN CONSIDERING THE CLAIMANT'S APPLICATION

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FOR AN ORDER CONFIRMING ARBITRATION AWARD - THE CLAIMANT LACKED AUTHORITY OR RIGHT OF ACCESS TO THE COURT. THE TRIAL COURT ERRED BY USURPING JURISDICTION WITHOUT A LAWFUL BASIS AND RENDERED AN ORDER WITHOUT LAWFUL AUTHORITY.

{119} "II. (SUBJECT-MATTER JURISDICTION) APPELLANT CONTENDS THAT THE TRIAL COURT ERRED BY USURPING JURISDICTION OVER MATTERS RESERVED AS A FEDERAL ISSUE. THE ALLEGED CONTRACT PRESENTED BY THE CLAIMANT INVOLVES MATTERS OF INTERSTATE COMMERCE, SUCH MATTERS WHICH ARE DELEGATED TO CONGRESS AND THE FEDERAL COURTS AND NOT TO THE STATES.

{110} "III. (FRAUD) APPELLANT CONTENDS THAT THE TRIAL COURT ERRED BY KNOWINGLY AND WILLFULLY ALLOWING FRAUD TO ENTER THE COURT. THE SUBJECT ARBITRATION AWARD WAS PERPETRATED ON FRAUD RESULTING FROM THE KNOWING AND WILLFUL MISAPPLICATION AND/OR CIRCUMVENTION OF ESTABLISHED LAW, DEPRIVING RESPONDENT HER RIGHTS TO DUE PROCESS OF LAW.

{111} "IV. (DUE PROCESS OF LAW) APPELLANT CONTENDS THAT THE TRIAL COURT ERRED BY DENYING APPELLANT'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF LAW. THE ACTIONS OF THE TRIAL COURT DENIED APPELLANT THE PROTECTIONS CLEARLY AFFORDED BY ESTABLISHED LAW AND THE OPPORTUNITY TO BE HEARD IN OPPOSITION TO THE CLAIMANT'S ALLEGATIONS.

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{¶12} "V. (JUDICIAL MISCONDUCT) APPELLANT CONTENDS THAT THE TRIAL COURT ERRED BY EXERCISING ITS AUTHORITY CONTRARY TO THE OHIO CONSTITUTION, U.S. CONSTITUTION, OHIO REVISED CODE, CODE OF JUDICIAL CONDUCT, RULES FOR THE GOVERNMENT OF THE JUDICIARY OF OHIO, AND CODE OF PROFESSIONAL CONDUCT. THE CONDUCT OF THE TRIAL COURT IS DEEMED BIASED AND PREJUDICED AGAINST THE APPELLANT. THE JUDGE NEGLECTED HIS OFFICIAL DUTY TO UPHOLD THE INTEGRITY OF THE JUDICIARY AND ABUSED HIS JUDICIAL DISCRETION.

{¶13} "VI. (FACTS AND LAW) APPELLANT CONTENDS THAT THE TRIAL COURT ERRED BY REFUSING TO HEAR OR RESPOND TO RESPONDENT'S MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE COURTS OF OHIO ARE NOT FOUNDED UPON TYRANNY OR DICTATORIAL AUTHORITY, RATHER THEY WERE CREATED TO ENSURE JUSTICE AND REMEDY BASED ON SOUND PRINCIPLES OF ESTABLISHED AND JUST LAWS. THE TRIAL COURT'S FAILURE TO ENTER ANY RESPONSE ON THE RECORD REGARDING ITS LEGAL BASIS FOR THE SAID ORDER PERMEATES A SENSE OF NEGLECT OR ILL-INTENT."

I, II

{¶14} Under her first two assignments of error, Appellant claims the trial court lacked personal jurisdiction and subject matter jurisdiction in this matter. We disagree.

{¶15} Appellant claims the trial court lacked personal jurisdiction because Appellee is a "non-registered and non-licensed foreign corporation (entity) in Ohio" which does not "have authority or the right of access to Ohio courts for remedy." (See

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Appellant's brief at 16). Upon review, we find Appellee is registered as a National Bank with the FDIC and as such has the power to sue and be sued pursuant to 12 USC 24.

{¶16} Furthermore, R.C. §2711.09 clearly states the proper jurisdiction lies with the court of common pleas.

{¶17} R.C. §2711.09 Application for order confirming the award

{¶18} "At any time within one year after an award in an arbitration proceeding is made, any party to the arbitration may apply to the court of common pleas for an order confirming the award. Thereupon the court shall grant such an order and enter judgment thereon, unless the award is vacated, modified, or corrected as prescribed in sections 2711.10 and 2711.11 of the Revised Code. Notice in writing of the application shall be served upon the adverse party or his attorney five days before the hearing thereof."

{¶19} Assignments of Error I and II are denied.

III, IV, V and VI

{¶20} We shall address Appellant's remaining issues together.

{¶21} As set forth above, Chapter 2711, et seq. governs arbitration procedures. This chapter authorizes, in part, judicial enforcement of an arbitration award. See *Land & Lake Dev., Inc. v. Lee Corp.*, 3rd Dist. No. 4-99-10, 1999 WL 1072694, at *2. Specifically, R.C. §2711.09 states:

{¶22} "[a]t any time within one year after an award in an arbitration proceeding is made, any party to the arbitration may apply to the court of common pleas for an order confirming the award. *Thereupon the court shall grant such an order and enter*

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judgment thereon, unless the award is vacated, modified, or corrected as prescribed in sections 2711.10 and 2711.11 of the Revised Code." (emphasis added).

{¶23} Absent a motion to modify, vacate, or correct the arbitration award, the trial court is without jurisdiction to do so. *Land & Lake Dev.*, supra at *2 (quoting *Colegrove v. Handler* (1986), 34 Ohio App.3d 142, 146, 517 N.E.2d 979). Therefore, the trial court may only confirm or dismiss the complaint. *Id.* (quoting *Colegrove*, supra at 146). See also *Warren Edn. Assn. v. Warren City Bd. of Edn.* (1985), 18 Ohio St.3d 170, 480 N.E.2d 456, at syllabus ("When a motion is made pursuant to R.C. 2711.09 ***, the court must grant the motion if it is timely, *unless a timely motion for modification or vacation* has been made and cause to modify or vacate is shown." (emphasis added)). Any court order that modifies an arbitration award is void ab initio. *Land & Lake Dev.*, supra at *2 (citing *Warren*, supra at 172).

{¶24} The time limit for filing a motion to vacate, modify or correct an arbitration award is contained in R.C. §2711.13, which provides:

{¶25} "After an award in an arbitration proceeding is made, any party to the arbitration may file a motion in the court of common pleas for an order vacating, modifying, or correcting the award as prescribed in sections 2711.10 and 2711.11 of the Revised Code.

{¶26} "Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is delivered to the parties in interest, as prescribed by law for service of notice of a motion in an action. For the purposes of the motion, any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served

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with the notice of motion, staying the proceedings of the adverse party to enforce the award.”

{¶27} The statute creates a statute of limitations for motions to vacate or modify arbitration awards that is mandatory and jurisdictional. *Galion v. Am. Fedn. of State, Cty. and Mun. Employees, Ohio Council 8, AFL-CIO, Local No. 2243* (1995), 71 Ohio St.3d 620, 622. “R.C. 2711.13 provides a three-month period within which a party must file a motion to vacate, modify, or correct an arbitration award * * *. If an application is filed after this period, the trial court lacks jurisdiction.” *Id.*

{¶28} The arbitration Award in the instant case was awarded on January 28, 2008. Such Award states that it was mailed to Appellant on January 29, 2008.

{¶29} Appellant did not file her Motion to Vacate until June 16, 2008, well past the three month time limit allowed for such under the above statute. Appellant does not allege that she was never served with a copy of the Award.

{¶30} Appellant’s motion to vacate was therefore untimely, and the trial court lacked jurisdiction to consider same.

{¶31} Appellant also assigns error to the trial court’s refusal to “hear or respond to [Appellant’s] motion for findings of fact and conclusions of law”.

{¶32} First, Civ.R. 52 specifically applies when questions of fact are tried by the court without a jury. Civ.R. 52 does not apply in cases of binding arbitration. *Bradley v. Tellom Leasing* (Aug. 26, 1996), Stark App. No. 1995CA00321.

{¶33} Ohio law does not require an arbitrator to issue findings of fact or conclusions of law. The validity of an arbitration award is unaffected by the lack of written findings of fact and conclusions of law. *Ford Hull-Mar Nursing Home, Inc. v.*

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Marr, Knapp, Crawfis & Assoc., Inc. (2000), 138 Ohio App.3d 174, 179, 740 N.E.2d 729. An arbitrator need not file findings of fact, because the trial court is precluded by statute from examining any legal or factual merits of a decision rendered pursuant to binding arbitration in the absence of fraud or bad faith on the part of the arbitrator. *Creatore v. Robert W. Baird & Co.* (2003), 154 Ohio App.3d 316, 797 N.E.2d 127, citing *Ford Hull-Mar Nursing Home, Inc.*, 138 Ohio App.3d at 181-182, 740 N.E.2d 729.

{¶34} As the trial court's role in a proceeding involving an application to confirm an arbitration award is limited to granting an application for an order and entering judgment thereon, unless the award is vacated, modified, or corrected, a trial court is not required to file findings of fact and conclusions of law.

{¶35} Assignments of Error III, IV, V and VI are overruled.

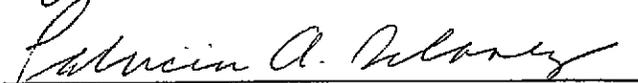
{¶36} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas of Knox County, Ohio is affirmed.

By: Wise, P. J.

Edwards, J., and

Delaney, J., concur.





JUDGES

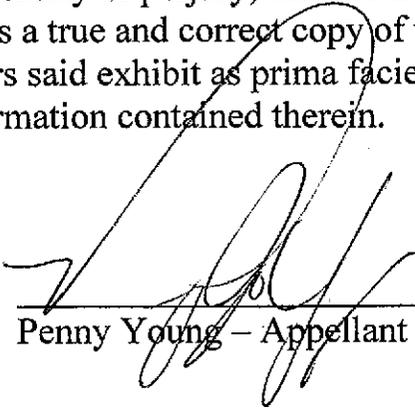
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EXHIBIT "B"

**Judgment Entry
of the
Knox County Court of Appeals**

Appellant hereby confirms, under penalty of perjury, that the information presented in the following exhibit is a true and correct copy of the actual document. Further, Appellant offers said exhibit as prima facie evidence with respect to the information contained therein.



Penny Young - Appellant

IN THE COURT OF APPEALS FOR KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED

APR 27 2009

COURT OF APPEALS
KNOX COUNTY, OHIO

FIA CARD SERVICES, N.A. fka MBNA
AMERICA BANK, N.A.

Plaintiff-Appellee

-vs-

PENNY YOUNG

Defendant-Appellant

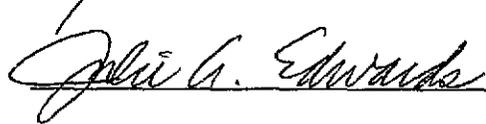
JUDGMENT ENTRY

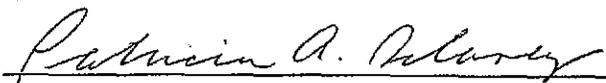
Case No. 08 CA 22

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Knox County, Ohio, is affirmed.

Costs assessed to Appellant.







JUDGES

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