

IN THE COURT OF APPEALS OF IOWA

No. 6-759 / 06-0540
Filed November 30, 2006

MBNA AMERICA BANK, N.A.,
Plaintiff-Appellant,

vs.

SHARON L. BRINK,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Thomas Koehler,
Judge.

MBNA America Bank, N.A., appeals the district court's denial of its motion
to confirm an arbitration award. **REVERSED AND REMANDED.**

Charles Litow, Cedar Rapids, for appellant.

Sharon Brink, Central City, pro se.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

HUITINK, P.J.

MBNA America Bank, N.A., appeals the district court's denial of its motion to confirm an arbitration award. We reverse and remand.

I. Background Facts & Proceedings.

On January 9, 2005, MBNA America Bank, N.A., (MBNA), filed a motion to confirm an arbitration award of \$13,374.59 entered in its favor on June 2, 2005. On January 13, 2006, the district court entered an order denying the motion to confirm, finding there was no indication in the record that Sharon Brink received notice of the motion or any indication that Brink agreed to forgo notice requirements. On January 31, 2006, MBNA filed an affidavit stating that on January 25, 2006, Brink was served with the original application and motion to confirm arbitration award. On February 20, 2006, MBNA renewed its motion to confirm arbitration award. On March 21, 2006, the district court denied the motion to confirm the award, finding there was no written agreement to submit its dispute with Brink to arbitration.

On appeal, MBNA argues the following:

- I. It was error at law to dismiss the action
- II. It was an error of law to fail to confirm the arbitration award under Iowa Code section 679A.11.
- III. The fact that the court found that a written arbitration award did not exist is not a valid ground for vacatur, modification or denial of confirmation.

II. Standard of Review.

We review the order denying confirmation of an arbitration award for correction of errors at law. *Humphreys v. Joe Johnson Law Firm, P.C.*, 491 N.W.2d 513, 514 (Iowa 1992).

III. Merits.

Arbitration is viewed favorably as an alternative to civil litigation. *Clinton Nat'l Bank v. Kirk Gross Co.*, 559 N.W.2d 282, 283 (Iowa 1997). "Arbitration avoids the expense and delay generally associated with traditional civil litigation, and draws on experts in the specific area of the dispute to resolve the matter." *\$99 Down Payment, Inc., v. Garard*, 592 N.W.2d 691, 694 (Iowa 1999). Our law "indulges every reasonable presumption in favor of the legality of an arbitration award." *Id.* "Consequently, judicial involvement in arbitration is very limited." *Id.* Iowa Code section 679A.11 (2005) provides that:

Upon application of a party, the district court shall confirm an award, unless within the time limits imposed under sections 679A.12 and 679A.13 grounds are urged for vacating, modifying, or correcting the award, in which case the district court shall proceed as provided in sections 679A.12 and 679A.13.

"The word 'shall' in a statute is ordinarily construed as mandatory." *Gibson v. Winterset Cmty. Sch. Dist.*, 258 Iowa 440, 444, 138 N.W.2d 112, 115 (1966). "Iowa Code section 679A.11 clearly imposes a duty upon the district court to confirm an arbitration award upon application of a party unless a timely ground to vacate or correct the award has been filed." *Garard*, 592 N.W.2d at 694. "This duty is consistent with the limited judicial involvement in the arbitration process, and the presumption of legality afforded to the arbitration process." *Id.* However, the court may deny confirmation of an arbitration award if relief is granted under the accompanying vacation and correction statutes. See Iowa Code § 679A.12.

Here, the district court dismissed the motion on the grounds that there was no executed written agreement to submit to arbitration. Iowa Code section 679A.1(2) states:

A provision in a written contract to submit to arbitration of a future controversy arising between the parties is valid, enforceable, and irrevocable unless grounds exist at law or in equity for the revocation of the contract. This subsection shall not apply to any of the following:

- a. A contract of adhesion.
- b. A contract between employers and employees.
- c. Unless otherwise provided in a separate writing executed by all parties to the contract, any claim sounding in tort whether or not involving a breach of contract.

The arbitrator found that “on or before March 10, 2005, the parties entered into an agreement providing that this matter shall be resolved through binding arbitration” MBNA provided the district court, attached to the motion to confirm, the credit card agreement wherein the applicant, Brink, agreed to arbitration by accepting the terms and conditions of the agreement.

Moreover, the Federal Truth in Lending Act states that “no credit card shall be issued except in response to a request or application therefor.” 15 U.S.C. § 1642 (1970). The card is issued after the application and agreement and when the credit card is used the agreement is accepted. See *Gray v. American Express Co.*, 743 F.2d 10, 15 (D.C. Cir. 1984). The agreement is a contract because the applicant agrees to its terms by his or her application for credit. Here, the agreement was issued in writing, and Brink used the credit card. The district court was in error to overrule and dismiss the motion to confirm. We reverse and remand the case to the district court to enter judgment in favor of MBNA against Brink in the sum of \$13,374.59.

REVERSED AND REMANDED.