**In The**

***Court of Appeals***

***Ninth District of Texas at Beaumont***

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**NO. 09-09-00240-CV**

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**FIA CARD SERVICES N.A. f/k/a MBNA, Appellant**

**V.**

**STUART STANDLEY, Appellee**

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**On Appeal from the 9th District Court**
**Montgomery County, Texas**
**Trial Cause No. 07-06-05749-CV**

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**MEMORANDUM OPINION**

Pursuant to a credit card agreement, appellant FIA Card Services N.A. f/k/a MBNA ("FIA") sought to have the trial court confirm an arbitration award in its favor in the amount of $25,549.30 from appellee Stuart Standley. Standley filed an answer that included a general denial, but the record does not reflect that Standley filed an application to vacate the arbitration award. After a bench trial, for which no reporter's record exists, the trial court signed a judgment in which it ordered that because "the law and facts were with Defendant, Stuart Standley[,]" FIA should recover nothing from Standley. FIA

presents one issue divided into five points of error for our review. We reverse and remand.

POINT OF ERROR FIVE

In its fifth point of error, FIA contends that because Standley did not seek to vacate the award within the time period provided in the Federal Arbitration Act ("FAA"), Standley's request was not timely. Because this issue is dispositive, we address it first. We need not decide whether the FAA or the Texas Arbitration Act ("TAA") controls because both acts require a party to file a motion to vacate the arbitrator's award within a specified period of time after the award is filed or delivered. *See* 9 U.S.C.A. § 12 (West 2009); TEX. CIV. PRAC. & REM. CODE ANN. § 171.088(b) (Vernon 2005). The FAA provides as follows, in pertinent part: "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 filed or delivered." 9 U.S.C.A. § 12 (West 2009). In addition, the TAA provides that a party must file an application to vacate the award "not later than the 90th day after the date of delivery of a copy of the award to the applicant." TEX. CIV. PRAC. & REM. CODE ANN. § 171.088(b).

The arbitration award in this case was signed on February 14, 2007. May 15, 2007, was the 90th day after the award was signed, and the award contained a certificate of service indicating that a copy of the award was sent to all parties by first class mail on

February 15, 2007.[1] The clerk's record does not indicate that Standley ever filed an application to vacate the award. Assuming without deciding that the general denial in Standley's answer constituted a request to vacate the award, Standley did not file his answer until June 26, 2007. Therefore, Standley did not seek to vacate, modify, or correct the arbitrator's award within three months or ninety days of the delivery of the award, and he therefore forfeited his right to seek judicial review of the arbitrator's award. *See* 9 U.S.C.A. § 12; TEX. CIV. PRAC. & REM. CODE ANN. § 171.088(b); *Eurocapital Group, Ltd. v. Goldman Sachs & Co.*, 17 S.W.3d 426, 430 n.4, 432 (Tex. App.--Houston [1st Dist.] 2000, no pet.). Accordingly, we sustain point of error five. We need not address FIA's remaining issues, as they would not result in greater relief. We reverse the trial court's judgment and remand the cause for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

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STEVE McKEITHEN
Chief Justice

Submitted on April 15, 2010
Opinion Delivered July 8, 2010

Before McKeithen, C.J., Kreger and Horton, JJ.

[1] Standley apparently does not contend, either in the trial court or on appeal, that he did not receive notice of the award.