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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| ACTION FINANCIAL IV, LLC,<br><br>Plaintiff/Appellee,<br><br>v.<br><br>JOE and JOSIE LOPEZ, husband and wife,<br><br>Defendants/Appellants. | 2 CA-CV 2008-0150<br>DEPARTMENT A<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 28, Rules of Civil Appellate Procedure |

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV200600381

Honorable Gilberto V. Figueroa, Judge

AFFIRMED

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Aron & Associates, P.C.
By Esther B. Simon and Peter M. Balsino — Tucson
Attorneys for Plaintiff/Appellee

Joe and Josie Lopez — Apache Junction
In Propria Personae

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E S P I N O S A, Judge.

**¶1** Appellants Joe and Josie Lopez (the Lopezes) appeal the trial court's confirmation of an arbitration award in favor of Action Financial IV, LLC (Action), arguing the arbitration proceedings were "a sham" and violated their due process rights. We affirm.

**Factual and Procedural History**

**¶2** We view the facts in the light most favorable to upholding the trial court's confirmation of an arbitration award.[1] *Park Imperial, Inc. v. E.L. Farmer Constr. Co.*, 9 Ariz. App. 511, 513-14, 454 P.2d 181, 183-84 (1969). In March 2006, Action sued the Lopezes to recover over $17,000 owed on a credit card account on which the Lopezes had defaulted. In their untimely answer to Action's complaint, the Lopezes denied the amount owed and that the debt was incurred for the benefit of the marital community. They also requested the case be "remanded for arbitration" pursuant to an arbitration clause in the credit card agreement. Action thereafter moved for summary judgment. In May 2007, the trial court, over Action's objection, determined the Lopezes were entitled to arbitration and denied Action's motion. The court thereafter placed the case on its inactive calendar and granted Action's request to stay further proceedings pending arbitration.

**¶3** In October 2007, Action served a notice of arbitration on the occupant of the Lopezes' address of record. Because the Lopezes never responded to the notice, in

[1]We note that the record is far from complete and does not contain several pertinent documents to which the parties refer in the proceedings below and on appeal. In crafting the factual and procedural history, we rely to a degree on inference from the record before us and have noted where insufficiencies lie and the inferences drawn therefrom. "Where matters are not included in the record on appeal, the missing portion of the record will be presumed to support the decision of the trial court." *State v. Rivera*, 168 Ariz. 102, 103, 811 P.2d 354, 355 (App. 1990).

January 2008, Action requested the trial court to remove the case from arbitration and enter summary judgment in its favor. Approximately two weeks later, the Lopezes filed a motion to extend the time within which to respond to Action's motion, claiming they recently had discovered its existence through "a chance review of the court's docket" and had not received the arbitration notice because they no longer lived at the address at which the notice was served. In a subsequent response to the motion to remove the case from arbitration, the Lopezes demanded that the case be returned to arbitration, but added that, in any event, they would challenge the result because they believed the National Arbitration Forum (NAF), the arbitrator required by the Lopezes' credit agreement, was an "unconscionable and unfair" forum. Finding that arbitration had not been completed, and there did not exist good cause to remove the case from arbitration, the court denied Action's motion.

**¶4** In April 2008, after Action had prevailed in the arbitration, it filed a motion with the trial court to confirm the arbitration award. The Lopezes opposed the motion and requested that the court set aside the award, arguing, "[d]ue process in the arbitration proceeding did not occur" as a result of NAF's "unconscionable" procedures, and that the underlying debt was not a community obligation. They also disputed the amount awarded. The Lopezes filed an affidavit in support of their motion and attached to it correspondence between NAF, Action, and themselves in which the Lopezes had requested and were denied an "In-Person-Participatory Hearing."[2]

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[2]In denying the Lopezes' request for a hearing, NAF described their request as "untimely" and citing its Code of Procedure, stated it would engage in a "Document Hearing." That code is not part of the record, but we infer from documents in the record as

**¶5** After a hearing on the cross-motions to confirm and set aside the arbitration award, the trial court denied the Lopezes' motion, granted Action's motion, and entered a judgment in favor of Action for $25,922.43, including interest and costs. This appeal followed.

**Discussion**

**¶6** The Lopezes contend that, because Action originally sought summary judgment, we should review the confirmation of the award de novo. But we review the confirmation of an arbitration award only for an abuse of discretion. *See Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co.*, 180 Ariz. 148, 150, 882 P.2d 1274, 1276 (1994). And "[a] trial court may only refuse to confirm an arbitration award on the grounds set forth in [A.R.S.] § 12-1512(A)." *FIA Card Servs., N.A. v. Levy*, 219 Ariz. 523, ¶ 6, 200 P.3d 1020, 1021 (App. 2008).[3] On appeal, the Lopezes argue that, as a matter of law, "contractual arbitration [must] afford the due process set forth in A.R.S. [§] 12-1505." They contend the trial court reversibly erred when it confirmed the arbitration award because "no meaningful arbitration proceeding was carried out" and there is a "question of fact . . . [as to] whether due process ha[d] been met." But the Lopezes never argue that one of the conditions set forth in § 12-1512 existed, which could be fatal to their appeal because a trial court may refuse to

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well as the portions of the NAF Code Action attached to its answering brief, that under NAF procedures the Lopezes were required to request a hearing within a specified time following their receipt of notice of arbitration.

[3]The Lopezes do not acknowledge that A.R.S. § 12-1512 circumscribes a trial court's authority to refuse to confirm an arbitration award. They only cite it for the proposition that in certain circumstances, a court may not confirm an arbitration award.

confirm an arbitration on these grounds only. *See id*. The Lopezes nonetheless argue that many aspects of the arbitration process were "unfair" or "unconscionable." We will, for the purposes of this appeal, assume that in so claiming, they are arguing, albeit marginally, that the award was procured by "undue means" under § 12-1512(A).

**¶7** This argument, however, is without merit in light of our recent decision in *Levy*, which, as Action points out, is directly on point. In *Levy*, a credit card company served a debtor with two notices of arbitration, the second of which informed him he had fourteen days within which to respond to NAF. *Id*. ¶ 3. The debtor filed an untimely response and, based on its review of all documents submitted and without a hearing, the arbitrator entered an award in favor of the credit card company, which the trial court confirmed. *Id*. ¶¶ 3-5. On appeal, the debtor challenged the arbitration process, contending the award was "procured by 'undue means'" under § 12-1512(A) and he was wrongfully denied an opportunity to fully participate because the arbitrator did not conduct a hearing. *Id*. ¶ 5. This court found that "when [the debtor] entered into the original contract with FIA, he agreed to be bound by [NAF's] Code," *id*. ¶ 8, and based on the Code's terms, he was not entitled to a hearing because he had failed to respond in a timely manner. *Id*. ¶ 12.

**¶8** The Lopezes contend *Levy* is factually distinguishable. Although we agree the facts in *Levy* are not identical to those presented here, the principle we articulated there—that, in the course of arbitration pursuant to a contractual arbitration clause an arbitrator may enforce its own procedural rules—applies with equal force here. *See id*. ¶ 12. The Lopezes further maintain that, in any event, we should not follow *Levy* because it was

incorrectly decided and is contrary to public policy. They assert, without citation to authority other than § 12-1505, that public policy demands that procedural arbitration rules only be enforced if a credit card holder has received a copy of the rules with his or her credit contract. But there is no such requirement in §§ 12-1501 through 12-1518. Furthermore, determining "'what is good public policy is for the executive and legislative departments and . . . courts must base their decisions on the law as it appears in the constitution and statutes.'" *Taylor v. Graham County Chamber of Commerce*, 201 Ariz. 184, ¶ 27, 33 P.3d 518, 525 (App. 2001), *quoting Harrison v. Laveen*, 67 Ariz. 337, 344, 196 P.2d 456, 460 (1948). We therefore decline to reconsider *Levy*.

**¶9** Here, not only did the Lopezes generally agree to abide by NAF's policies at the time they entered into the contract, they ultimately demanded that the case proceed before NAF when Action initially filed suit against them. As in *Levy*, the NAF rules apprised the Lopezes of applicable deadlines and the procedural consequences of disregarding them. Because they did not comply with NAF deadlines, they were not entitled to a hearing. *See Levy*, 219 Ariz. 523, ¶ 12, 200 P.3d at 1022. A document review, therefore, was all the process they were due in the arbitration; we cannot say the trial court abused its discretion when it confirmed the arbitration award pursuant to the NAF review procedure.[4]

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[4]In light of this conclusion, we need not address the Lopezes' claims that NAF is an "unconscionable" forum. And in any event, they fail to meaningfully argue how NAF's behavior in their arbitration was unconscionable. The Lopezes' primary grievance is that, in accordance with its rules, NAF denied them a hearing. As explained above, this was not unconscionable in light of *Levy*. In support of their argument that "NAF provided a sham proceeding" and "is . . . renown for such shams," the Lopezes cite one out-of-state case in which NAF was found to have behaved unconscionably over fifteen years ago and a

**¶10** The Lopezes also claim NAF's procedures were unfair because they did not receive notice of the arbitration, but this argument is unavailing for several reasons.[5] First, as Action points out, a subsequent general appearance waives any defect in service. *See Montano v. Scottsdale Baptist Hosp., Inc.*, 119 Ariz. 448, 452, 581 P.2d 682, 686 (1978). Although this principle may not control when failure to respond or an untimely response to an improperly-served summons irreversibly denies a party's rights in an arbitration, we need not dwell on this issue because, in response to Action's motion to remove the case from arbitration, the Lopezes specifically requested that NAF retain jurisdiction over the case. Thus, they again willingly subjected themselves to the NAF rules, which meant they were not entitled to a hearing. The Lopezes may not now complain these rules are unfair. *See Levy*, 219 Ariz. 523, ¶ 8, 200 P.3d at 1022; *cf. State v. Farley*, 199 Ariz. 542, ¶ 20, 19 P.3d 1258, 1262 (App. 2001) (appellant may not complain that trial court erred in granting instruction he requested).

**¶11** Additionally, the Lopezes dispute that the notice of arbitration was sent to their correct address and make much of the fact they had been filing documents and corresponding with Action using a different address. The record, however, undercuts their argument,

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secondary-source text from over ten years ago discussing that case. These citations do not show or suggest that NAF behaved unconscionably in this case. The trial court properly disregarded this irrelevant argument.

[5]The Lopezes also appear to complain about the amount of the arbitration award and claim the hearing officer was biased against them. But they fail to meaningfully argue these issues. Therefore, we need not consider them. *See* Ariz. R. Civ. App. P. 13(a)(6); *Torrez v. Knowlton*, 205 Ariz. 550, n.1, 73 P.3d 1285, 1287 n.1 (App. 2003).

showing they continued to use the address to which the notice was sent on documents filed with the court until at least December 2006 and responded well into 2007 to filings sent to this address. There is no evidence in the record Action had sent any documents to their new address prior to the notice of arbitration, which was served in October 2007. The court sent one ruling to the new address in November 2006 after the Lopezes used it in the caption to a motion, but the court reverted to the address of record after they filed an affidavit reflecting that address in December 2006.

**¶12** We next address the Lopezes' claims that the proceedings were unfair because NAF denied them a hearing and instead proceeded with a document review simply because they failed to pay the $250 hearing fee. Again, although the Lopezes do not specifically cite the statute, we infer from this argument that they contend the award was procured by undue means under § 12-1512(A). However, even had the Lopezes properly invoked § 12-1512(A), this assertion does not appear to be supported by the record. The Lopezes claim they were not required to pay this fee and that NAF acknowledged its mistake in demanding it from them. But the record shows the Lopezes requested a hearing in a letter dated February 6, 2008, and NAF responded by requesting the $250 hearing fee on February 12, 2008. On February 29, 2008, the Lopezes replied that they believed the contractual arbitration clause required Action to advance the hearing fees. In a letter dated March 12, NAF acknowledged that the February 12 letter had been sent in error not because the Lopezes did not owe the money, but because their initial request for a hearing was untimely, therefore they were not

entitled to a hearing under NAF rules in any event.[6] Thus, the reason NAF denied the Lopezes' request for hearing was solely because their request was untimely, not because they had failed to pay the hearing fee. Furthermore, it is unclear the agreement actually required Action and not the Lopezes to pay this fee. The agreement states, "[W]e will advance the first $500.00 of the arbitration filing and hearing fees for any Claim which you may file against us." As the Lopezes acknowledge, "you" refers to the cardholder. Because Action filed a claim against the Lopezes and not the Lopezes against Action, this provision of the agreement does not apply.

**Disposition**

**¶13** For the foregoing reasons, the judgment is affirmed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

JOHN PELANDER, Chief Judge

[6]The record is not entirely clear as to the deadline for requesting a hearing. But it was the appellants' burden to provide any portions of the record necessary to support their claims. *See Rivera*, 168 Ariz. at 103, 811 P.2d at 355.