NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1909

BRENT ANDREW RICHARDSON,
Appellant

v.

WILLIAM A. BABISKIN; AMERICAN ARBITRATION ASSOCIATION;
PORT AUTHORITY OF NEW YORK AND NEW JERSEY;
PORT AUTHORITY POLICE DEPARTMENT

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2-19-cv-12891)
District Judge: Honorable Ester Salas

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 7, 2021
Before: CHAGARES, Chief Judge, PHIPPS, and COWEN, Circuit Judges

(Opinion filed: March 30, 2022)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Pro se appellant Brent Richardson appeals from an order of the United States District Court for the District of New Jersey dismissing his motion to vacate an adverse arbitration award. For the following reasons, we will affirm.

Richardson was employed as a police officer with the Port Authority of New York and New Jersey (Port Authority). He was subject to an employment disciplinary hearing for misconduct arising from his conviction for indecent assault, a second-degree misdemeanor. The proceedings resulted in an Arbitration Award issued on October 26, 2018, finding just cause for Richardson's termination from employment. On May 23, 2019, Richardson filed in the District Court an Order to Show Cause, arguing that the time should be tolled for filing a motion to vacate the arbitration award under the Federal Arbitration Act (FAA) because he was not personally served a copy of the award; rather, service was made solely on his attorney, who had passed away on November 18, 2018. In an order entered July 2, 2019, the District sua sponte dismissed the action for lack of subject matter jurisdiction and denied the motion. The dismissal was without prejudice to Richardson's filing an amended motion curing the deficiencies noted by the District Court.

On July 19, 2019, Richardson filed a Motion to Vacate the Arbitration Award pursuant to 9 U.S.C. § 10.[1] The Port Authority moved to dismiss the motion for lack of

[1] The FAA provides that "the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration." 9 U.S.C. § 10(a). "Notice of a motion to vacate . . . must be served upon the adverse party or his attorney within three months after the award is filed or delivered." 9 U.S.C. § 12.

subject matter jurisdiction and because it was time-barred. The District Court granted the motion to dismiss and this appeal ensued.

We have appellate jurisdiction pursuant to 28 U.S.C. § 1291.[2] We review de novo a district court's dismissal of an action for lack of subject matter jurisdiction. See Nichole Med. Equip. & Supply, Inc. v. TriCenturion, Inc., 694 F.3d 340, 347 (3d Cir. 2012). Because the Port Authority's attack on jurisdiction is facial, we consider only the facts alleged in the motion to vacate and draw reasonable inferences in the light most favorable to Richardson. Id. Our review of the District Court's determination that the action was otherwise time-barred is also de novo. See Dixon Ticonderoga Co. v. Estate of O'Connor, 248 F.3d 151, 161 (3d Cir. 2001).

The only basis on which Richardson asserted federal jurisdiction was the FAA. As the District Court properly observed, the FAA does not itself provide for independent federal-question jurisdiction; rather, federal jurisdiction "must be [based on] diversity of citizenship or some other independent basis." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 610 U.S. 1, 25 n.32 (1983). That independent basis must be evident from the face of the complaint. See Goldman v. Citigroup Glob. Markets Inc., 834 F.3d 242, 255 (3d Cir. 2016) (holding that a district court may not "look through" to the underlying arbitration for a basis for federal question jurisdiction).

[2] Although the District Court's dismissal was without prejudice, the order is considered final for purposes of § 1291 because, as discussed *infra* in footnote 4, the time for filing a motion to vacate arbitration has expired. See Ahmed v. Dragovich, 297 F.3d 201, 207 (3d Cir. 2002).

We agree with the District Court that it lacked jurisdiction under 28 U.S.C. § 1332 because the necessary complete diversity was absent. See Mennen Co. v. Atl. Mut. Ins. Co., 147 F.3d 287, 290 (3d Cir. 1998) ("[J]urisdiction [under § 1332] is lacking if any plaintiff and any defendant are citizens of the same state."). Richardson averred in his pleadings before the District Court that he was a resident of New York, and the Port Authority is considered a citizen of both New York and New Jersey for purposes of diversity jurisdiction.[3] World Trade Ctr. Props., L.L.C. v. Hartford Fire Ins. Co., 345 F.3d 154, 184 (2d Cir. 2003), overruled on other grounds by Wachovia Bank, N.A. v. Schmidt, 546 U.S. 303, 309-10 (2006) (holding that, as a political subdivision of both states, "the Port Authority is not so closely aligned with the two state governments that created it to foreclose its being treated as a citizen of both New York and New Jersey for diversity purposes") (citing Illinois v. City of Milwaukee, 406 U.S. 91, 97 (1972) ("It is well settled that for the purposes of diversity of citizenship, political subdivisions are citizens of their respective States."); see also Yancoskie v. Delaware River Port

[3] Richardson argues for the first time on appeal that there was diversity jurisdiction because he is a resident of Pennsylvania. But he admitted in his Order to Show Cause that he was a resident of New York, and his motion to vacate the arbitration award, filed eight weeks later, was mailed from the same New York address. See Glick v. White Motor Co., 458 F.2d 1287, 1291 (3d Cir. 1972) (explaining that judicial admissions are also binding in a case on appeal). Even assuming Richardson subsequently changed his domicile, the existence of diversity is generally determined at the time that the complaint is filed. See Freeport-McMoRan, Inc. v. K N Energy, Inc., 498 U.S. 426, 429 (1991); Nationwide Mut. Fire Ins. Co. v. T & D Cottage Auto Parts & Serv., Inc., 705 F.2d 685, 688 (3d Cir. 1983) (diversity jurisdiction determined "by the facts that existed at the time the complaint was filed"); see also Rosado v. Wyman, 397 U.S. 397, 405 n.6 (1970) (noting "the well-settled rule that a federal court does not lose jurisdiction over a diversity action which was well founded at the outset even though one of the parties may later change domicile").

Authority, 528 F.2d 722, 727 n.17 (3d Cir.1975) (holding that, for purposes of determining diversity of citizenship jurisdiction, the Delaware River Port Authority, as a "body corporate and politic," "should be treated as a corporation incorporated in both New Jersey and Pennsylvania" and deemed a citizen of both); see generally Hertz Corp. v. Friend, 559 U.S. 77, 88 (2010) (noting that a corporation is "deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business") (citation omitted).

We also agree that the District Court lacked federal jurisdiction under 28 U.S.C. § 1331. Richardson argued that his motion to vacate raises a federal question for purposes of jurisdiction because the arbitration process violated his due process and equal protection rights. In particular, Richardson alleged that undue delay in the disciplinary proceedings and his suspension without pay were in violation of the labor agreement, and, contrary to the Arbitrator's finding, were the result of discriminatory animus. Federal question jurisdiction exists where a motion to vacate under § 10 raises on its face "a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities" Goldman, 834 F.3d at 249 (applying the "well-pleaded complaint rule" to § 10 motions) (citation omitted). We agree with the District Court that Richardson's allegations do not raise a substantial federal issue warranting federal jurisdiction, as they largely mirror the grounds for vacating the award under 9 U.S.C. §

10(a)(4). Id. Accordingly, because the District Court lacked jurisdiction, the motion to vacate was properly dismissed.[4]

Based on the foregoing, we will affirm the District Court's judgment.

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[4] Even assuming that the complaint could be construed liberally to allege a due process claim within the scope of § 1331, see, e.g. Adams v. Suozzi, 433 F.3d 220, 224-25 (2d Cir. 2005), we agree with District Court's alternative finding that the motion to vacate is time-barred under § 12 of the FAA, and, to the extent equitable tolling applies, that it is not warranted here.