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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 Longview Financial Group Incorporated,  
10 Petitioner,

No. CV-13-02412-PHX-GMS

**ORDER**

11 v.

12 Tsarina Lau Branyan,  
13 Respondent.

14 Pending before the Court is Longview Financial Group, Inc.'s Petition to Confirm  
15 Arbitration Award. For the following reasons, the Petition is granted.

16 **BACKGROUND**

17 In February 2013, Petitioner Longview Financial Group Incorporated  
18 ("Longview") filed a Statement of Claim against Respondent Branyan with the Financial  
19 Industry Regulatory Authority ("FINRA"). (Doc 1, Ex. 1.) The underlying arbitration  
20 alleged that Branyan and others had improperly received kickbacks from issuers of  
21 securities for selling away securities from Longview. (*Id.*) FINRA's Director of  
22 Arbitration served copies of the Statement of Claim by certified mail upon Branyan at her  
23 address of record as stated in her Form U-4. (Doc. 37, Ex. F.) Per FINRA's rules,  
24 Branyan was required to update her address in the Form U-4 for a period of two years  
25 after termination of her association with any firm. *See* FINRA, NASD Notice to  
26 Members 97-31.

27 Branyan failed to appear or answer the Statement of Claim, and on July 27, 2012,  
28 Longview filed a motion for default judgment. (Doc. 1.) On August 14, 2012, FINRA

1 granted the motion for default judgment, and on May 2, 2013 a single arbitrator in a  
2 default proceeding entered an award against Branyan in the amount of \$190,690.00. (*Id.*,  
3 Ex. 1.) The arbitrator found that Branyan had been properly served as evidenced by an  
4 executed receipt card for the Statement of Claim. (*Id.*)

5 Longview requests confirmation of the arbitration award pursuant to the Federal  
6 Arbitration Act, 9 U.S.C. § 9. (Doc. 1.) Branyan argues that the award is both  
7 substantively and procedurally flawed and should be vacated or modified. (Doc. 13.)

### 8 DISCUSSION

9 The Federal Arbitration Act (“FAA”) enumerates the limited grounds on which a  
10 federal court may vacate, modify, or correct an arbitration award. 9 U.S.C. §§ 9–11.<sup>1</sup> The  
11 Ninth Circuit has held that the FAA requires confirmation of an award “even in the face  
12 of erroneous findings of fact or misinterpretations of law.” *Kyocera Corp. v. Prudential–*  
13 *Bache Trade Svcs., Inc.*, 341 F.3d 987, 997 (9th Cir. 2003). In addition, the Ninth Circuit  
14 has “adopted a narrow ‘manifest disregard of the law’ exception under which a  
15 procedurally proper arbitration award may be vacated.” *Collins v. D.R. Horton, Inc.*, 505  
16 F.3d 874, 879 (9th Cir. 2007).

17 The burden of establishing the grounds on which an award may be overturned or  
18 modified rests on the challenging party, and the party is required to raise these grounds  
19 within a three-month limitations period. *See Stolt-Nielsen S.A. v. AnimalFeeds Int’l*  
20 *Corp.*, 559 U.S. 662, 671 (2010); *United States v. Park Place Associates, Ltd.*, 563 F.3d  
21 907, 919 n.8 (9th Cir. 2009). Specifically, 9 U.S.C. § 12 states that “[n]otice of a motion  
22 to vacate, modify, or correct an award must be served upon the adverse party or his  
23 attorney within three months after the award is filed or delivered.” Failure to timely raise  
24 an objection to a confirmation petition waives a party’s ability to raise the statutory

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26 <sup>1</sup> The statute permits a decision to be vacated only if (1) the award was procured  
27 by corruption or fraud, (2) the arbitrators were evidently partial or corrupt, (3) the  
28 arbitrators were guilty of misbehavior, or (4) the arbitrators exceeded their powers. 9  
U.S.C. § 10. The FAA permits modification only where (1) there was a miscalculation of  
figures, (2) the arbitrators have awarded upon a matter not submitted to them, or (3) the  
award is imperfect in form.

1 defenses in the FAA. *Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda*  
2 *Cnty. v. Celotex Corp.*, 708 F.2d 488, 490 (9th Cir. 1983) (citing *Sheet Metal Workers*  
3 *International Association, Local 252 v. Standard Sheet Metal, Inc.*, 699 F.2d 481, 483  
4 (9th Cir. 1983)).

5 In the present case, Longview asserts that FINRA served the arbitration award on  
6 Branyan on May 3, 2013. (Doc. 1, Ex. F.) Branyan filed her opposition to the current  
7 Petition on December 20, 2013, more than three months later. (Doc. 13.) Although  
8 Branyan does not address the § 12 limitations period in her briefing, she does assert that  
9 she was not given notice of any arbitration proceedings until December 14, 2013, when  
10 she was served the current Petition. (*Id.*) Thus, the questions to be determined by the  
11 parties' briefings are whether Branyan received notice of the arbitration proceedings and  
12 whether this notice triggered the limitations period of § 12. This analysis is guided by the  
13 burdens of proof placed on the parties.

14 Although the Ninth Circuit has not specified the exact burden of proof placed  
15 upon a party alleging lack of service of process in arbitration proceedings, in other cases  
16 where parties allege lack of service of process, the burden of proof is high. *See S.E.C. v.*  
17 *Internet Solutions for Bus. Inc.*, 509 F.3d 1161, 1165–66 (9th Cir. 2007). This burden  
18 becomes steeper, requiring the party to provide “strong and convincing evidence,” when  
19 there is a signed receipt of service. *Id.* A high burden of proof for a challenge to a default  
20 proceeding in arbitration comports generally with a party's burden in seeking to vacate an  
21 arbitrator's award. *See Stolt-Nielsen*, 559 U.S. at 671 (noting the “high hurdle” that  
22 challengers to arbitration awards face).

23 In the present case, FINRA specifically found that Branyan had received notice of  
24 the arbitration proceedings because there was an executed receipt card for service of the  
25 Statement of Claim, which was sent by certified mail to the address listed on Branyan's  
26 Form U-4. (Doc. 1, Ex. 1.) This same address was used by FINRA to send the notice of  
27 default and the arbitration award, and it was also used by Longview to send several  
28 documents to Branyan relating to the arbitration proceedings. (Doc. 1.) Branyan has

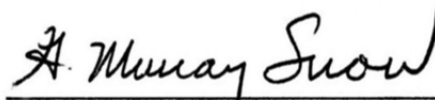
1 provided no evidence, apart from her bare allegations in her Opposition to the current  
2 Petition, that service was not effected. Such allegations, at least in district court default  
3 proceedings, do not provide strong and convincing evidence of lack of service. *See Am.*  
4 *Honda Motor Co., Inc. v. AZGrafix*, No. CV-08-0656-PHX-FJM, 2008 WL 5329062 at  
5 \*1 (D. Ariz. Dec. 22, 2008); *Craigslist, Inc. v. Hubert*, 278 F.R.D. 510, 513-15 (N.D.  
6 Cal. 2011) (“[A] self-serving declaration is generally insufficient to defeat a signed  
7 returned of service.”). It follows that Branyan was either made aware or should have  
8 become aware of the subsequent default proceedings and arbitration award entered on  
9 May 3, 2013. This is especially true because FINRA sent all of its notices by certified  
10 mail to Branyan’s same address.

11 Because the Court finds “the award [was] filed or delivered” to Branyan on May  
12 3, 2013, and because Branyan did not object to the award until December 20, 2013, after  
13 the limitations period of § 12 had run, Branyan waived her right to assert the statutory  
14 defenses in the FAA. 9 U.S.C. § 12.

15 **IT IS THEREFORE ORDERED** that Longview Financial Group, Inc.’s Petition  
16 to Confirm Arbitration Award (Doc. 1) is **GRANTED**.

17 **IT IS FURTHER ORDERED** that the Clerk terminate this action.

18 Dated this 20th day of January, 2015.

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22 G. Murray Snow  
23 United States District Judge  
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