**AFFIRM; and Opinion Filed December 18, 2017.**

**In The**
# Court of Appeals
# Fifth District of Texas at Dallas

**No. 05-16-01378-CV**

**CAROL LEE CRAIG, Appellant**
**V.**
**SOUTHWEST SECURITIES, INC. & JOHN C. COYLE, Appellee**

**On Appeal from the 44th Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. DC-16-07300**

## MEMORANDUM OPINION

Before Justices Lang-Miers, Brown, and Boatright
Opinion by Justice Brown

Appellant Carol Lee Craig appeals from a final judgment confirming an arbitration award. In two issues, she contends the trial court erred in dismissing her motion to vacate the arbitration award because she timely served notice of the motion and, even if the service was untimely, the trial court should have equitably tolled the deadline for service. For the following reasons, we affirm the trial court's final judgment confirming the arbitration award.

### BACKGROUND

Beginning in 2007, Craig held an investment account and a traditional IRA account with appellee Southwest Securities, Inc. (SWS). Appellee John C. Coyle, a SWS investment representative, served as Craig's broker. From 2007 to 2009, Craig's accounts lost value.

In July 2014, Craig filed an arbitration proceeding before the Financial Industry Regulatory Authority (FINRA) asserting a number of different causes of action allegedly resulting from appellees' mismanagement of her accounts and failure to follow her investment objectives. Both Craig and appellees agreed the arbitration dispute would be governed by the Federal Arbitration Act (FAA).[1] Following a hearing, an arbitration panel entered an award denying all of Craig's claims on March 18, 2016.

On June 16, 2016, Craig electronically filed "Movant's Motion to Vacate Arbitration Decision" in the 44th Judicial District Court of Dallas County and paid a filing fee. Craig did not request issuance of citations or service. Instead, her counsel emailed a copy of the motion to Clint Corrie, appellees' counsel in the underlying arbitration proceeding. Craig's motion complained of the arbitrators' partiality and false statements by appellees' counsel, which "tainted the award with fraud and/or undue means."

On September 1, 2016, Craig filed a supplemental motion, which was identical to her original motion with the exception of incorporating previously-unavailable citations to the record from the arbitration panel hearing. Craig delivered a copy of the supplemental motion to appellees' counsel by certified mail, return receipt requested. Further, Craig sought issuances of citation from the Dallas County Clerk's Office and, thereafter, SWS, through its registered agent for process, and Coyle were served with process and citation.

Appellees subsequently filed a motion requesting the trial court dismiss Craig's motion to vacate and confirm the arbitration decision. They contended Craig failed to properly serve her initial motion to dismiss on appellees within three months after the arbitration award was issued as required under the FAA. After a hearing, the trial court signed an Order granting appellees' motion. That same day, the trial court also signed a final judgment confirming the arbitration

[1] 9 U.S.C. §§ 1-16 (2013).

award and stating that the judgment "fully and finally disposes of all claims and parties and is therefore, final and appealable."

APPLICABLE LAW

Texas law strongly favors arbitration; thus, review of an arbitration decision is "extraordinarily narrow." *Univ. Computer Sys., Inc. v. Dealer Solutions*, 183 S.W.3d 741, 752 (Tex. App.—Houston [1st Dist.] 2005, pet. denied). We review a district court's order confirming an arbitration award under a de novo standard. *Peacock v. Wave Tec Pools, Inc.*, 107 S.W.3d 631 (Tex. App.—Waco 2003, no pet.).

Both parties agree the FAA governs this arbitration dispute. In such a case, the FAA applies to the substantive rules of decision, but Texas law, and specifically the Texas General Arbitration Act (TAA),[2] governs the procedural matters. *In re Chestnut Energy Partners*, 300 S.W.3d 386, 395-96 (Tex. App.—Dallas 2009, pet. denied) (*citing Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 272 (Tex. 1992)); *Roehrs v. FSI Holdings Inc.*, 246 S.W.3d 796, 804 (Tex. App.—Dallas 2008, pet. denied); *Holcim (Tx.) Ltd. P'ship v. Humboldt Wedge, Inc.*, 211 S.W.3d 796, 800–01 (Tex. App.—Waco 2006, no pet.); *Hamm v. Millennium Income Fund, LLC*, 178 S.W.3d 256, 260 n.3 (Tex. App.—Houston [1st Dist.] 2005, pet. denied); *J.D. Edwards World Solutions Co. v. Estes, Inc.*, 91 S.W.3d 836, 839 (Tex. App.—Fort Worth 2002, pet. denied).

The FAA imposes a strict notice requirement:

> 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. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for the service of notice of motion in an action in the same court. . . .

[2] TEX. CIV. PRAC. & REM. CODE ANN. §§ 171.001-171.098 (West 2011).

9 U.S.C. § 12 (Section 12). Section 12 provides a substantive three-month limitations period. *Eurocapital Group Ltd. v. Goldman Sachs & Co.*, 17 S.W.3d 426, 431 (Tex. App.—Houston [1st Dist.] 2000, no pet.); *see In re Chevron U.S.A., Inc. v. Texas, Inc.*, 419 S.W.3d 318, 326 (Tex. App.—El Paso 2010 no pet.); *Holcim (Tx.) Ltd. P'ship*, 211 S.W.3d at 801-02. If a party does not serve notice of a motion to vacate before Section 12's statutory period has expired, the trial court must grant an order confirming the award. *See In re Chevron U.S.A., Inc.*, 419 S.W.3d at 326; *Turner v. Tex/Tow Martine Towing & Salvage, LLC*, 502 S.W.3d 368, 372 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (trial court has a ministerial duty to deny an untimely motion to vacate).

The TAA requires service of process to initiate a court proceeding to vacate an arbitration award. TEX. CIV. PRAC. & REM. CODE ANN. §§ 171.088, 171.094. Section 171.094 mandates service of process on each adverse party named in an application. *Id*. § 171.094. "To the extent applicable, the process and service and return of service must be in the form and include the substance required for process and service on a defendant in a civil action in a district court." *Id*.

ANALYSIS

Craig asserts that she satisfied the FAA's requirement for serving notice of her motion to vacate by emailing a copy of the motion to appellees' counsel within Section 12's three-month limitations period. Section 12 calls for service as "prescribed by law for the service of notice of motion" in a trial court action, and Craig contends her service by email complied with Texas Rule of Civil Procedure 21a. *See* TEX. R. CIV. P. 21a (methods for serving notice of pleadings, pleas, motions, or other forms of request, other than citations to be served upon filing a cause of action). The TAA, however, specifically governs procedural matters in proceedings arising out of an arbitration dispute, *see In re Chestnut Energy Partners*, 300 S.W.3d at 394, so its statutory provisions on service apply in this case.

The TAA requires a party to issue process for service on each adverse party when filing an initial application to vacate an arbitration award. TEX. CIV. PRAC. & REM. CODE ANN. § 171.094. Here, Craig filed her motion in order to initiate a court proceeding to vacate the underlying arbitration award. Thus, under section 171.094, she was required to arrange for service of process on appellees upon filing the motion. *Id*. Craig did not arrange for service of process until she filed her supplemental motion to vacate on September 1, 2016, more than five months after the arbitration panel entered its award. Because she did not serve notice of her motion to vacate within Section 12's three-month limitations period, the service was untimely and the trial court was required to dismiss her motion as untimely. *See In re Chevron U.S.A., Inc.*, 419 S.W.3d at 326. Accordingly, we overrule Craig's first issue.

In her second issue, Craig maintains that, even if she did not timely serve notice of her motion to vacate on appellees, the time for service should have been extended due to appellees' bad faith actions. Specifically, Craig complains appellees' counsel failed to (1) provide FINRA with a transcript of the arbitration proceedings until the Section 12 deadline had passed and (2) alert her that he was not authorized to accept service or the service was improper.[3]

Some federal courts have recognized an equitable tolling exception to the FAA's three-month limitations period, *see, e.g.*, *Move, Inc. v. Citigroup Global Mkts.*, 840 F.3d 1152, 1156-57 (9th Cir. 2016), but neither the Fifth Circuit nor Texas courts have done so. To the contrary, the Fifth Circuit concluded that there are no equitable tolling or discovery rule exceptions to Section 12's three-month limitations period. *Cigna Ins. Co. v. Huddleston*, 986 F.2d 1418, 1993 WL 58742, at *11 (5th Cir. Feb. 16, 1993) (per curiam) (unpublished op.). And Texas courts have determined that, "once the three-month statutory period contained in section 12 has expired, a

[3] Citing to her counsel's argument during the hearing on appellees' motion, Craig maintains appellees' counsel acknowledged receipt of the motion in a telephone call. Although counsel did refer to the call during argument at the hearing, there is no evidence of the call in the record.

party may not attempt to vacate an arbitration award for any reason." *Turner*, 502 S.W.3d at 372-73); *In re Chevron U.S.A., Inc.*, 419 S.W.3d at 326.

In *Smith v. J-Hite, Inc.*, 127 S.W.3d 837 (Tex. App.—Eastland 2003, no pet.), the Eastland Court of Appeals, without explicitly deciding whether an equitable tolling exception applies to Section 12, rejected a party's argument that the limitations period should be tolled. Likewise, we reject Craig's argument. For equitable tolling to apply, she would have to show that appellees' conduct induced or tricked her into allowing the deadline to pass. *Id.* at 843. Craig did not allow the deadline to pass. Instead, she timely filed her motion to vacate and attempted to serve notice that same day by emailing the motion to appellees' counsel. Nothing appellees did caused her to allow the deadline to pass; Craig's service simply did not comply with the TAA. Thus, even if we were to recognize an equitable tolling exception applied to Section 12, there is no evidence to support its application in this case. Accordingly, we overrule Craig's second issue.

We affirm the trial court's final judgment confirming the arbitration award.

/Ada Brown/
ADA BROWN
JUSTICE

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# Court of Appeals
# Fifth District of Texas at Dallas

## JUDGMENT

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| CAROL LEE CRAIG, Appellant | On Appeal from the 44th Judicial District Court, Dallas County, Texas |
| No. 05-16-01378-CV V. | Trial Court Cause No. DC-16-07300. Opinion delivered by Justice Brown. |
| SOUTHWEST SECURITIES, INC. & JOHN C. COYLE, Appellee | Justices Lang-Miers and Boatright participating. |

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellees SOUTHWEST SECURITIES, INC. & JOHN C. COYLE recover their costs of this appeal from appellant CAROL LEE CRAIG.

Judgment entered this 18th day of December, 2017.