

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	CASE NO: 2012-CP-10-8135
Karen Oliver,)	
)	
Plaintiff,)	ORDER
vs.)	FILED
)	OCT 18 2013
Amanda Lawrence and Trident United Way,)	
)	
Defendants.)	JULIE J. ARMSTRONG
		CLERK, C.P. & G.S.

This matter came before the Court on October 9, 2013 on a Motion to Reconsider filed by Plaintiff Karen Oliver. At such time, the Court heard arguments from both sides and has reviewed the pleadings, motions, memoranda, and exhibits filed with the Court. For the reasons set forth below, Plaintiff's Motion to Reconsider is DENIED.

FACTUAL AND PROCEDURAL BACKGROUND

On August 30, 2010, Plaintiff was hired by AmeriCorp, and through her service with AmeriCorps, was placed to work at Trident United Way ("TUW"). On August 30, 2010, Plaintiff entered into an agreement, which contained a grievance procedure and arbitration clause (the "Agreement"). On December 15, 2010, Plaintiff's employment with AmeriCorps was terminated and Plaintiff, thereafter, pursued the grievance procedure set forth in the Agreement. An initial grievance hearing was held, where Plaintiff asserted claims for breach of contract accompanied by fraudulent intent, third party beneficiary of contract, and allegedly defamatory statements. The neutral ruled in favor of TUW at the proceeding.

On February 15, 2011, Plaintiff pursued binding arbitration in accordance with the Agreement. On June 1, 2011, the arbitrator sent a letter by way of standard mail to Plaintiff

notifying her of the arbitration date of June 23, 2011 at 10:00 a.m. The letter was addressed to Plaintiff at 1945 Ghana Street, Johns Island, South Carolina 29455. This is the same address Plaintiff identified when she filed the Complaint which is the subject of this action.

The arbitration was held on June 23, 2011 and Plaintiff failed to appear. The arbitration order noted that Plaintiff was given notice of the date, time, and location of the hearing by way of the above-referenced letter, which was filed with the Court as an exhibit. The order further noted the arbitrator's efforts to telephone Plaintiff to confirm her attendance at the hearing. Additionally, the order states that the arbitrator allowed a thirty (30) minute delay before opening the hearing to ensure that Plaintiff had ample opportunity to appear. Based on this, the arbitrator determined that Plaintiff had received proper notice and went forward with the hearing on the merits. After hearing testimony of the witnesses and reviewing evidentiary documents, the arbitrator issued an order denying Plaintiff's claims and finding in favor of TUW.

Plaintiff then filed this action on December 18, 2012 (approximately 18 months after the binding arbitration), which contains claims for defamation, breach of contract by fraudulent act, third party beneficiary of contract, and breach of written notice. Defendants filed a Motion to Dismiss, which was granted on or about May 31, 2013, and Plaintiff then filed a Motion to Reconsider pursuant to Rule 59 of the South Carolina Rules of Procedure.

LAW/ANALYSIS

In her Motion to Reconsider, Plaintiff alleges that she did not receive proper notice of the arbitration hearing. She alleges that she should have been served with notice by way of personal service or certified mail, rather than regular standard mail. The South Carolina

Uniform Arbitration Act requires that notice of the arbitration hearing be accomplished by personal service or registered mail. S.C. Code. Ann. § 15-48-50. However, the Federal Arbitration Act (FAA) does not contain any such requirement with regard to notice of the arbitration hearing. See 9 U.S.C. §§ 1, et seq. Specifically, the FAA does not require that the hearing date and time be noticed by personal service or certified mail. See id.

Therefore, the issue in this matter is whether the subject arbitration agreement is governed by the SC Uniform Arbitration Act or the Federal Arbitration Act. Here, the Agreement does not specify whether it is governed by the SC or Federal Act. Section 15-48-10(b)(2) of the South Carolina Act states that it does not apply to “[a]rbitration agreements between employers and employees or between their respective representatives unless the agreement provides that the chapter shall apply[.]” The Agreement at issue is undoubtedly between employer Trident United Way and employee Karen Oliver. Thus, the Court finds that, because the Agreement does not provide that it is governed by the SC Act, pursuant to 15-48-10(b)(2), the Federal Arbitration Act applies.

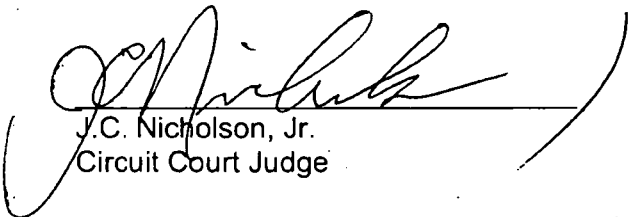
It should also be noted that, under South Carolina law, “[u]nless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” Munoz v. Green Tree Fin. Corp., 542 S.C. 531 (S.C. 2001). The Court finds that the Agreement in this matter involves “interstate commerce,” as it was an employment agreement whereby Plaintiff Karen Oliver was employed by Trident United Way’s Americorp Program, which is a national service program sponsored by the federal government, which receives federal funds. Thus, for this additional reason, the Court finds that the Agreement is governed by

the FAA.

Because the Agreement is governed by the FAA, there was no requirement that Plaintiff be served with notice of the hearing by personal service or registered mail. Plaintiff was served by regular standard mail at 1945 Ghana Street, Johns Island, South Carolina 29455, which Plaintiff concedes is the correct address. This was adequate notice under the FAA. Accordingly, Plaintiff's Motion to Reconsider is denied because she received adequate notice of the arbitration hearing and the claims raised by Plaintiff have been arbitrated and ruled upon.

The Court further finds that Plaintiff's Motion to Reconsider as to her claim for defamation is denied on the additional ground that it is barred by the statute of limitations. This issue is more fully set forth in the Order granting Defendant's Motion to Dismiss, which is incorporated herein by reference.

Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to Reconsider is DENIED.


J.C. Nicholson, Jr.
Circuit Court Judge

Charleston, South Carolina
10/27, 2013

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



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KAREN OLIVER
1945 GHANA ST
JOHNS ISLAND SC 29455-8118

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

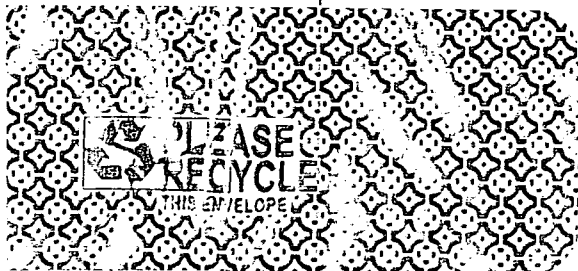
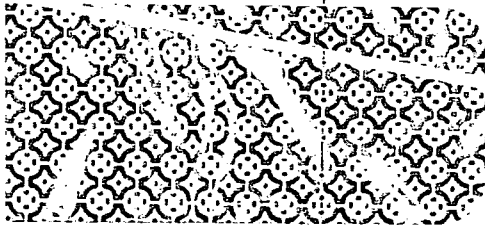
Order/Crt denies plntff's request for additional hearing

CASE NO: 2012CP1008135

Karen Oliver VS Amanda Lawrence , defendant, et al

This judgment was entered on the 18th day of November, 2013, and a copy mailed first class on Tuesday, November 19, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.



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JKJ-040 201311

