This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1423

Charles Schwab & Co., Inc., a corporation,
Respondent,

vs.

Alioune Thiam,
Appellant.

Filed July 10, 2023
Affirmed
Reilly, Judge

Ramsey County District Court
File No. 62-CV-21-6060

Julie H. Firestone, Lewis Brisbois Bisgaard & Smith LLP, Minneapolis, Minnesota (for respondent)

Alioune Thiam, Hugo, Minnesota (pro se appellant)

Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges the confirmation of an arbitration award, arguing that he never signed an arbitration agreement, never accepted the panel of arbitrators, and did not receive notice of the arbitration award. Because appellant's motion to vacate the award was untimely, we affirm.

FACTS

In 2017, appellant Alioune Thiam opened three accounts with respondent Charles Schwab & Co. Inc. (Schwab), a securities broker-dealer. Thiam deposited funds into his accounts and began trading. Two years later, Thiam filed suit against Schwab in district court and alleged he suffered a significant financial loss after the company failed to deposit dividend payments into his accounts and blocked him from selling his options. Thiam asserted claims against Schwab of fraud, theft, and illegal seizure seeking $160,000 in restitution. The district court granted Schwab's motion to stay the proceedings and compel arbitration.

The parties submitted the matter to the Financial Industry Regulatory Authority (FINRA) for arbitration and further agreed to be bound by FINRA's rules. FINRA assigned a panel of three arbitrators to the case. The panel first considered the arbitrability of Thiam's claims and determined that the parties "contracted to submit disputed matters related to their contractual relationship to mandatory arbitration." The panel also observed that the issue had been litigated in the district court and concluded Thiam's claims were arbitrable. Upon learning who the panel members were, Thiam requested that the chair of the panel recuse himself. Thiam asserted that a panel of only white arbitrators would not be impartial to him and requested the panel members take an anti-bias test. The chair of the panel did not recuse himself.

In June 2021, the panel held a hearing via videoconference and Thiam failed to appear. Schwab moved to dismiss Thiam's claims and award sanctions for Thiam's violations of FINRA's code of arbitration procedure. The panel deferred ruling on the motions to allow Thiam to be heard. The next day, Thiam appeared at the rescheduled evidentiary hearing and presented his case. On August 3, 2021, FINRA issued an arbitration award dismissing Thiam's claims and ordering Thiam to pay $4,000 in attorney's fees and $3,500 in discovery sanctions to Schwab. FINRA served the award on the parties via email and provided a letter advising them of their right to file a motion to vacate the award in federal or state court within the applicable statutory time period.

On November 17, 2021, Schwab filed a motion in the district court to confirm the FINRA arbitration award and enter judgment against Thiam. Schwab noted that over 90 days had passed since the award was issued and Thiam had not filed or served a motion to modify or vacate the award. On December 6, Thiam filed a responsive motion requesting the district court vacate the award and declare it "void in the interest of justice." Thiam argued he did not discover the award until November 19, never agreed to arbitrate his claims when he opened his accounts, and never accepted the purportedly biased panel of arbitrators. Schwab produced an email from a FINRA employee confirming that FINRA's records showed Thiam opened and viewed the digitally served award on August 3.

A referee of the district court granted Schwab's motion to confirm the award and judgment was entered in favor of Schwab. Thiam requested judicial review of the referee's decision and sought relief from the judgment under Minn. R. Civ. P. 60.02. A judge of the district court granted Thiam's motion for review but denied his requested relief from the judgment. The district court reasoned that the referee correctly confirmed the arbitration award under Minn. Stat. § 572B.22 (2022) and properly concluded Thiam's motion to vacate the arbitration award was untimely.

This appeal follows.

DECISION

The district court did not err in confirming the arbitration award and Thiam's motion to vacate was untimely.

We review the district court's decision confirming an arbitration award de novo. *Seagate Tech., LLC v. W. Digit. Corp.*, 854 N.W.2d 750, 760 (Minn. 2014). The district court must make every reasonable presumption favoring an arbitration award's validity. *Id.* at 761. The district court must issue an order confirming the award unless a timely motion to modify, correct, or vacate the award is filed. Minn. Stat. § 572B.22. A motion to vacate an arbitration award must be filed within 90 days of receiving notice of the award or within 90 days after the movant learns that the award was procured by fraud, corruption, or other undue means. Minn. Stat. § 572B.23(b) (2022). The failure to move to vacate an award within 90 days, when the motion is not based on fraud, corruption, or undue means, prevents judicial review of the award. *Abd Alla v. Mourssi*, 680 N.W.2d 569, 573 (Minn. App. 2004).

FINRA served the arbitration award on the parties on August 3, 2021, dismissing Thiam's claims and ordering him to pay $7,500 to Schwab. Schwab moved the district court to confirm the arbitration award and enter judgment against Thiam on November 17, 2021. Thiam did not seek vacation of the award until December 6, 2021, more than 90 days after August 3. Thiam's argument that he did not receive notice of the award until November is unpersuasive. A FINRA clerk stated that its records showed Thiam opened and viewed the digitally served arbitration award on the same day it was issued. Thiam advanced no evidence to support his claim that he was unaware of the award until Schwab moved the district court to confirm it. Moreover, the award itself indicated notice occurred on August 3 and was served with a letter that advised Thiam of his right to move to vacate the award within a certain, statutory time period. On this record, the district court properly determined that Thiam received notice of the award on August 3 and that his motion to vacate was therefore untimely. *See* Minn. Stat. § 572B.22. Because his motion was untimely and properly denied by the district court, we do not reach his substantive arguments on the three statutory grounds he contends support vacating the award. *See* Minn. Stat. § 572B.23 (2022) (setting forth six statutory grounds for vacating an award including "evident partiality by an arbitrator appointed as a neutral," "an arbitrator exceeded [their] powers," and "there was no agreement to arbitrate"). Absent any timely motion to vacate, the district court did not err in confirming the arbitration award.

Affirmed.