

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OLD REPUBLIC INSURANCE  
COMPANY, AS ASSIGNEE OF  
COUNTRYWIDE HOME LOANS, INC.  
Appellant,  
vs.  
CYNTHIA L. NORRIS A/K/A CYNTHIA  
DEJORDY; AND MARK J. NORRIS,  
Respondents.

No. 65188

FILED

DEC 16 2015

TRACIE K. LINDENMAN  
CLERK OF THE COURT  
BY *Tracie K. Lindenman*  
CHIEF DEPUTY CLERK

*ORDER DISMISSING APPEAL IN PART AND AFFIRMING IN PART*

This is an appeal from a final judgment following court-annexed arbitration. Second Judicial District Court, Washoe County; Bridget Robb Peck, Judge.

Appellant filed a complaint against respondents for failure to pay their mortgage, and the matter was assigned to court-annexed arbitration. The arbitrator assigned to the matter sent a letter to both parties that included a request, pursuant to NAR 24(A), for the parties to pay an advance of \$250 towards the arbitrator's fees and costs and gave the parties 30 days to comply. Thereafter, the arbitrator issued a pre-hearing order, which reminded the parties of the requirement to pay the advance and gave the parties 10 days from the date of that order to comply. The order further noted that if payment was not made "in the case of the Plaintiff, the Arbitrator will dismiss the Complaint," as is allowed by NAR 24(A) ("If a party fails to pay the required advance, the party may be subject to sanctions, including an award dismissing the complaint or entry of the non-complying party's default."). After the expiration of the time to pay the advance, the arbitrator issued an order

dismissing the complaint pursuant to NAR 24(A), stating that respondents had paid the deposit, but appellant had not, despite two notices to do so.<sup>1</sup>

After receiving the dismissal order, appellant attempted to pay the advance via a letter, but the arbitrator rejected the letter and the late payment. Appellant then filed a motion with the arbitrator seeking reconsideration of the dismissal order, or, in the alternative, to set aside the order. That same day, appellant also filed a challenge to the arbitrator's decision to dismiss the complaint with the arbitration commissioner pursuant to NAR 8(B) ("Any challenge to the authority or action of an arbitrator shall be filed with the commissioner..."), claiming that the failure to pay was inadvertent.<sup>2</sup> The arbitrator denied the alternative motions, stating that he lacked jurisdiction to consider them and that the proper avenue for relief was to seek the commissioner's review via NAR 8(B). The commissioner also denied appellant's motion and affirmed the dismissal of appellant's complaint.

After its challenge was denied, appellant filed a second challenge to the arbitrator's actions based on the arbitrator's denial of appellant's alternative motions for reconsideration or to set aside the dismissal order. This motion was also denied, with the commissioner stating that it had already affirmed the dismissal of the complaint, and

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<sup>1</sup>Although the arbitrator's letter and his pre-trial order gave different deadlines by which to pay the advance, the order dismissing the complaint was not entered until both deadlines had expired.

<sup>2</sup>While the motion to the arbitrator included an affidavit claiming that the failure to pay the advance "was overlooked due to mistake, inadvertence and/or excusable neglect," no such affidavit was attached to the challenge filed with the commissioner.

therefore, the arbitrator was precluded from overturning that decision. The commissioner also stated that appellant's failure to pay the advance, without affidavits providing a legally viable excuse for that failure, amounted to inexcusable neglect that warranted the dismissal of the complaint.

In addition to the motions and challenges, appellant also filed a timely request for trial de novo in the district court. See NAR 18(A) (allowing any party to seek trial de novo in the district court following court-annexed arbitration). The district court vacated that motion due to the prior dismissal of appellant's complaint and the affirmance of that dismissal by the commissioner. This appeal followed.

On appeal, appellant presents four arguments. Three of these arguments—whether the arbitrator abused his discretion in dismissing the case, whether the arbitrator had jurisdiction to consider the alternative reconsideration and set aside motions, and whether the commissioner erred in affirming the dismissal of the complaint—are not properly before this court. NAR 8(B), which allows parties to court-annexed arbitration to raise challenges to decisions of the arbitrator with the arbitration commissioner, provides that

[j]udicial review of the ruling of the commissioner may be obtained by filing a petition for such review with the commissioner within 10 days of the date of service of the commissioner's ruling. The commissioner shall then notify the district judge to whom the case is assigned of the petition . . . . The district judge to whom the case is assigned shall have the *non-reviewable* power to uphold, overturn or modify the commissioner's ruling . . . .

(Emphasis added). Thus, the only way for appellant to have these arguments reviewed was to seek review of the commissioner's rulings in

the district court by filing a petition for judicial review with the commissioner, which appellant did not do. See NAR 8(B). And even if appellant had sought such review, this court would still not have jurisdiction to review the district court's decision as the rule specifically states the district court's rulings on such matters are "non-reviewable." See *id.* Accordingly, we dismiss appellant's appeal as to these arguments.

Appellant's remaining argument on appeal challenges the district court's order vacating the request for trial de novo. Specifically, appellant argues that the right to a trial by jury is an important one, and while the Nevada Arbitration Rules allow for a waiver of that right, such waiver cannot be arbitrary. We conclude that the district court did not err in vacating the request for trial de novo.

Pursuant to NAR 18(F),

[i]f the district court strikes, denies, or dismisses<sup>3</sup> a request for trial de novo for any reason, the court shall explain its reasons in writing . . . . A judgment entered pursuant to this rule shall have the same force and effect as a final judgment of the court in a civil action, and may be appealed in the same manner. Review on appeal, however, is limited to the order striking, denying, or dismissing the trial de novo request . . . .

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<sup>3</sup>In this case, the district court vacated, rather than struck, denied, or dismissed, the request for trial de novo. See NAR 18(F). The Nevada Supreme Court, however, concluded in a prior procedural order issued in this case that such an order was reviewable under NAR 18(F). See *Old Republic Ins. Co. v. Norris*, Docket No. 65188 (Order to Show Cause, July 29, 2014) ("Under NAR 18(F), orders vacating a request for a trial de novo and entering judgment on the arbitration award may be appealed to challenge the denial of the request for a trial de novo.").

We review such a decision for an abuse of discretion. *Gittings v. Hartz*, 116 Nev. 386, 391, 996 P.2d 898, 901 (2000).

Here, the district court noted that the dismissal was based on appellant's failure to pay the advance, and that the commissioner found appellant's inaction constituted inexcusable neglect warranting the dismissal of the case. Furthermore, under NAR 24(A), the arbitrator has the specific discretion to dismiss a complaint on the exact facts presented in this case—for failure to timely pay the advance when it is requested by the arbitrator. And, in this case, there were not one, but two requests for payment, one of which warned appellant that failure to pay would result in the dismissal of the complaint. Accordingly, we cannot conclude that the district court abused its discretion in vacating the request for trial de novo and entering judgment in favor of respondents, and therefore, we affirm that decision.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Bridget Robb Peck, District Judge  
Qualey Law Group  
Cynthia L. Norris  
Mark J. Norris  
Washoe District Court Clerk