

IN THE SUPREME COURT OF THE STATE OF NEVADA

RIVIERA OPERATING  
CORPORATION, A NEVADA  
CORPORATION, D/B/A RIVIERA  
HOTEL AND CASINO,  
Appellant,  
vs.  
GENUTA M. MULFORD,  
Respondent.

No. 38016

**FILED**

**FEB 15 2002**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment on an arbitration award in a negligence action, entered after the district court struck appellant's trial de novo request because the request did not include an NAR 18 certification that the arbitrator's fees had been or would be paid.<sup>1</sup>

Documents submitted by the parties with respect to respondent's motion to dismiss the appeal, which we denied, indicated that the district court decided that the NAR 18(A) certification requirement is jurisdictional. In her motion to strike the trial de novo request, and again in her reply to appellant's opposition to the motion,

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<sup>1</sup>NAR 18(A) provides that "[a]ny party requesting a trial de novo must certify that all arbitrator fees and costs for such party have been paid or shall be paid within thirty (30) days, or that an objection is pending and any balance of fees or costs shall be paid in accordance with subsection (C) of this rule." NAR 18(C) provides that a party waives the right to a trial de novo when he or she fails to pay the arbitrator's bill.

respondent noted the lack of certification and argued that “[a]s [the Riviera] has therefore filed an ‘untimely request for trial de novo,’ it should not be considered by the district court since it is jurisdictional pursuant to NAR 18(A) and (B).” The district court granted respondent’s motion and struck the request on this basis. Because the certification requirement is not jurisdictional, we directed respondent to show cause why the district court’s judgment should not be reversed.

Respondent has filed a response, in which she now contends that “the district court reasonably determined that the requirement that an appealing party certify payment, while not jurisdictional, was nevertheless, mandatory.” Respondent argues that the district court did not abuse its discretion by striking the trial de novo request on this basis. Respondent’s recharacterization of the district court’s decision is not supported by the record, however, and this flaw fatally undermines her argument.

The Nevada Constitution article 1, section 3 provides: “The right of trial by Jury shall be secured to all and remain inviolate forever; but a Jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law . . . .” Although court-annexed arbitration is mandatory for certain civil cases, it does not supplant the right to a jury

trial.<sup>2</sup> A party does not waive this fundamental constitutional right by making a clerical-type error.<sup>3</sup>

Under NAR 18(B), the thirty-day filing requirement is jurisdictional, and under NAR 18(C), a party waives the right to a trial de novo if she does not pay the arbitrator's bill. NAR 18(A) requires the party requesting a trial de novo to certify that the arbitrator's bill has been paid or will be paid within thirty days, or after resolution of a pending objection. Here, appellant's request was timely filed, and although the request lacked the NAR 18(A) certification, the arbitrator's bill was in fact paid within thirty days. Because the right to a jury trial is a fundamental

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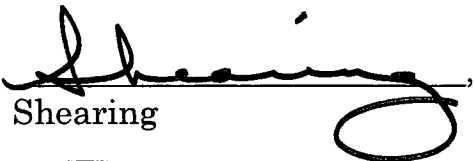
<sup>2</sup>See NAR 18(D) ("Any party to the action is entitled to the benefit of a timely filed request for trial de novo; . . .").


<sup>3</sup>See Lum v. Mission Inn Foundation, Inc., 226 Cal. Rptr. 22, 24-25 (Ct. App. 1986) (citations omitted):


Though compulsory arbitration is a highly valuable adjunct to dispute resolution, we must not lose sight of where we are coming from. In the beginning was the right to adjudication in the courts. The admirable objective of establishing a preliminary 'simplified and economical procedure for obtaining prompt and equitable resolution' of disputes was obviously not intended to supplant the right, ultimately, to have disputes resolved by the courts. Manifestly, the important rights of access to the courts, jury trial and appeal should not be lost as a result of clerical-like errors in complying with procedural requirements, unless that result is absolutely compelled.

right, the certification requirement is not jurisdictional, and appellant substantially complied with NAR 18 by timely filing the trial de novo request and paying the arbitrator's bill within thirty days, the district court should not have stricken the request. We therefore

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for further proceedings consistent with this order.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Michael L. Douglas, District Judge  
Rands, South, Gardner & Hetey  
George G. Trachtman  
Clark County Clerk