

2018 IL App (2d) 170639-U
No. 2-17-0639
Order filed April 26, 2018

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

MATTHEW CZUBIK,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff and)	
Counterdefendant-Appellant,)	
)	
v.)	No. 17-SR-125
)	
JIM HEALY,)	
)	Honorable
Defendant and)	Peter W. Ostling,
Counterplaintiff-Appellee.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly entered judgment on an arbitration award, as plaintiff's "motion" did not constitute a proper notice of rejection of the award and he could not otherwise contest the award.

¶ 2 Plaintiff and counterdefendant, Matthew Czubik, appeals, *pro se*, from a judgment entered on an arbitration award in favor of defendant and counterplaintiff, Jim Healy. We affirm.

¶ 3 On January 27, 2017, Czubik filed a small claims complaint in the circuit court of Du Page County against Healy. Czubik, who rented property from Healy under a commercial

lease, alleged that Healy had breached the lease by providing an “uninhabitable space” and “by failing to maintain the heating unit.” On March 15, 2017, Healy filed his answer and affirmative defenses, as well as a counterclaim alleging that Czubik had breached the lease by failing to pay rent and utilities; failing to maintain utilities in his name; making alterations to the premises; failing to return the premises in a similar condition as when he took possession; and causing damage to the premises beyond normal wear and tear.

¶ 4 On April 5, 2017, the trial court set the case for an arbitration hearing. On June 7, 2017, the arbitrators awarded Healy \$9236.95, from which the arbitrators deducted Czubik’s \$2500 security deposit. On June 28, 2017, Czubik filed an untitled motion providing, in pertinent part, as follows:

“With this being my first time defending myself I ask the court allow me another chance to submit new evidence of images showing the before condition of the commercial space I am being accused of damaging. I would also like to subpoena [various individuals]. These images and witnesses are necessary in giving me a fair chance.”

On July 27, 2017, the trial court denied Czubik’s motion and entered judgment on the arbitration award. This appeal followed.

¶ 5 Before proceeding, we note that Healy has failed to file a brief in this appeal. Nevertheless, the record and the issues raised on appeal are such that review of the merits is appropriate under *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 6 Certain actions are subject to mandatory arbitration. Ill. S. Ct. R. 86 (eff. Jan. 1, 1994). However, in such cases, a party is entitled to reject the arbitrators’ award and request a trial. Ill.

S. Ct. R. 93(a) (eff. Jan. 1, 1997). If no party rejects the award, any party may move for entry of judgment on the award. Ill. S. Ct. R. 92(c) (eff. Jan. 1, 2017). The committee comments to Rule 93(a) state:

“Delaware and New Jersey rules relative to arbitration programs expressly provide that the sole remedy of a party unwilling to accept the arbitration award is to file a rejection and to proceed on to trial. *It is the Committee’s view that this should be the interpretation applied by the courts with regard to proceedings after award.*” (Emphasis added.) Ill. S. Ct. R. 93(a), Committee Comments (eff. Jan. 1, 1997).

¶ 7 As discussed, the trial court entered judgment on the arbitrators’ award. Czubik states that he filed his June 28, 2017, motion in order “to prove [that] the defendants [*sic*] claims that [he] had damaged the commercial space were not true.” Czubik observes that a rejection of an arbitration award is supposed to be filed within 30 days of the award and must challenge the award. Czubik contends that his June 28, 2017, motion “was [filed] within 30 days [of the arbitration award] and carried the intention of challenging the award of arbitrators with significant evidence.” Czubik appears to imply that his motion should be considered a notice of rejection. We disagree. When Czubik filed the motion, Illinois Supreme Court Rule 95 (eff. June 1, 1987) provided:

“The notice of rejection of award shall be in substantially the following form:

In the Circuit Court of the _____
Judicial Circuit, _____
County, Illinois.

(Or, in the Circuit Court of Cook County, Illinois.)

A.B., C.D. *etc.*)
(naming all plaintiffs),)
Plaintiffs)
)

v.)	No. _____
)	Amount Claimed _____
H.J., K.L. <i>etc.</i>)	
(naming all defendants),)	
Defendants)	

NOTICE OF REJECTION OF AWARD

To the Clerk of the Circuit Court:
Notice is given that _____
rejects the award of the arbitrators entered in this cause on _____
and hereby requests a trial of this action.

By: _____
(Certificate of Notice of Attorney)"

Czubik’s June 28, 2017, motion was not in substantially the form prescribed by this rule. Accordingly, the motion did not function as a notice of rejection and the trial court correctly entered judgment on the arbitration award, as provided by Rule 92.

¶ 8 Czubik also argues that the arbitrators improperly awarded attorney fees to Healy. Czubik notes that, under the “American rule,” fees may be awarded only when provided by statute or by contract. See, *e.g.*, *Hjerpe v. Thoma*, 2017 IL App (4th) 160844, ¶ 28. Czubik further contends, without elaboration, that Healy’s attorney took advantage of Czubik for personal gain and that she was guilty of fraud in violation of the Illinois Rules of Professional Conduct. These arguments go to the merits of the arbitration proceedings. As noted, the committee comments to Rule 93(a) support the view that the only remedy for a party who is unwilling to accept an arbitration award is to reject the award and proceed to trial. Accordingly, there is no mechanism for the correction of errors in the arbitration hearing itself. A party who fails to properly reject an arbitration award cannot proceed to trial and cannot otherwise contest the merits of the arbitration award. *Liebovich Steel & Aluminum Co. v. Advance Iron Works, Inc.*, 353 Ill. App. 3d 311, 315 (2004).

¶ 9 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 10 Affirmed.