NOT RECOMMENDED FOR PUBLICATION

No. 24-3007

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

VLADIMIR ALEXANDER L. SWERCHOWSKY,

Plaintiff-Appellant,

v.

U-HAUL INTERNATIONAL, INC., et al,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

ORDER

Before: GILMAN, GIBBONS, and BLOOMEKATZ, Circuit Judges.

Vladimir Alexander L. Swerchowsky, a pro se Ohio resident, appeals the district court's order compelling arbitration and dismissing his employment action. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the reasons that follow, we affirm.

In July 2023, Swerchowsky filed a complaint in state court asserting various causes of action stemming from his former employment with U-Haul Co. of Massachusetts and Ohio, Inc. (U-Haul), such as breach of contract, breach of fiduciary duty, wrongful termination, discrimination, and violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* Swerchowsky sued U-Haul's parent companies, U-Haul International, Inc. and AMERCO (now known as U-Haul Holding Company (UHHC)); UHHC's Chief Executive Officer, Edward J. Shoen; U-Haul International, Inc.'s statutory agent, C.T. Corporation System; and his former manager, Serena Barth. He sought costs and damages.

The defendants removed the lawsuit to federal court based on federal-question and diversity jurisdiction. *See* 28 U.S.C. §§ 1331, 1332(a), 1441. They then moved to compel

arbitration under the Federal Arbitration Act (FAA), 9 U.S.C. § 1, *et seq.*, and to dismiss the case, asserting that Swerchowsky's claims arose exclusively from his employment with U-Haul and were subject to mandatory arbitration under the agreement he signed upon his hiring. After more than six weeks had passed and Swerchowsky had failed to respond, the district court dismissed the case for the reasons stated in the defendants' motion. Swerchowsky now appeals.

We review de novo a district court's decision to dismiss a suit and compel arbitration. *See Boykin v. Fam. Dollar Stores of Mich., LLC*, 3 F.4th 832, 836 (6th Cir. 2021).

The FAA requires district courts to compel arbitration "on issues as to which an arbitration agreement has been signed." *Atkins v. CGI Techs. & Sols., Inc.*, 724 F. App'x 383, 389 (6th Cir. 2018) (quoting *KPMG LLP v. Cocchi*, 565 U.S. 18, 22 (2011) (per curiam)). This requirement reflects "an 'emphatic federal policy in favor of arbitral dispute resolution.'" *Id.* (quoting *KPMG*, 565 U.S. at 21). Generally, "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. As the party opposing arbitration, Swerchowsky bears the burden of proving that his claims are not well-suited for arbitration. *See Hawkins v. Cintas Corp.*, 32 F.4th 625, 629 (6th Cir. 2022) (citing *Green Tree Fin. Corp.-Ala v. Randolph*, 531 U.S. 79, 91 (2000)). But because Swerchowsky failed to respond to the defendants' motion to compel arbitration, he is limited on appeal to challenging the reasons that the district court gave for its decision. *See Heyward v. Cooper*, 88 F.4th 648, 654 (6th Cir. 2023).

Here, the district court found that the parties executed an arbitration agreement that encompassed all of Swerchowsky's claims against the defendants, and the record bears that out. As part of Swerchowsky's onboarding process in December 2022, the parties executed an arbitration agreement that expressly covered "all disputes relating to or arising out of [Swerchowsky's] employment with U-Haul or the termination of that employment," including "claims for wrongful termination of employment, breach of contract, fraud, employment discrimination, harassment or retaliation" under state or federal law, "tort claims, wage or overtime

claims or other claims under the Labor Code, or any other legal or equitable claims and causes of action recognized by local, state or federal law or regulations." Swerchowsky's claims all stem from either his brief employment with U-Haul or the termination of that employment and, therefore, fall squarely within the scope of that arbitration agreement. Swerchowsky disputes this conclusion, but he fails to show any error in the district court's reasoning, which is all he can do on appeal given his failure to respond to the defendants' motion to compel arbitration below. *See id.* Although Swerchowsky argues that the allegations in his complaint were enough to show that he signed the arbitration agreement under duress or that the agreement was otherwise unenforceable, his allegations to that effect were wholly conclusory and, therefore, insufficient to avoid his arbitration agreement with the defendants. *See Robinson-Williams v. C H G Hosp. W. Monroe, L.L.C.*, No. 21-30659, 2022 WL 3137422, at *2 (5th Cir. Aug. 5, 2022) ("[Plaintiff's] conclusory allegation of duress is insufficient to avoid the [Employment Dispute Resolution] Agreements.").

To the extent Swerchowsky seeks to raise new arguments that go beyond the legal grounds offered by the district court—such as his assertions that the arbitration agreement is illegal, unconscionable, and against public policy—he has forfeited appellate review of those arguments by virtue of his failure to oppose the defendants' motion to compel arbitration below. *See Heyward*, 88 F.4th at 655 (explaining that a plaintiff who does not respond to a motion to dismiss forfeits any "arguments that go beyond the legal grounds offered by the district court" (citing *Humphrey v. U.S. Att'y Gen.'s Off.*, 279 F. App'x 328, 331 (6th Cir. 2008))); *United States v. Ellison*, 462 F.3d 557, 560 (6th Cir. 2006) (noting that this court generally will not consider arguments raised for the first time on appeal).

Swerchowsky counters that, due to delays in the mail service, he did not receive the defendants' motion to compel arbitration until three days before his response was due, leaving him insufficient time to prepare and file a response. He also faults the district court for not notifying him when his response was due. But pro se litigants have an "affirmative duty to monitor" the district court's docket, *United States v. Barrow*, No. 17-1628, 2018 WL 2670617, at *2 (6th Cir.

Feb. 8, 2018) (quoting *Yeschick v. Mineta*, 675 F.3d 622, 629 (6th Cir. 2012)), and the defendants' motion to compel arbitration certified that it was filed with the court's electronic-filing system on October 13, 2023—nearly seven weeks before the district court ruled on the motion. The defendants' motion further certified that it would be mailed to Swerchowsky at his address of record. This is an acceptable method of service, which was "complete upon mailing." Fed. R. Civ. P. 5(b)(2)(C); *see United States v. Wright*, No. 00-4030, 2000 WL 1846340, at *2 (4th Cir. Dec. 18, 2000) (per curiam) (citing authorities standing for the proposition that a valid certificate of service is sufficient to establish service absent proof to the contrary); *see also In re Yoder Co.*, 758 F.2d 1114, 1118 (6th Cir. 1985) ("The common law has long recognized a presumption that an item properly mailed was received by the addressee."). Under the district court's local rules, Swerchowsky had 30 days from the date of service to file a response to the defendant's motion to compel arbitration, with an additional three days because the motion was served by mail. *See* N.D. Ohio L.R. 7.1(d). A district court is not required to advise a pro se litigant of his obligations under the rules of procedure or of the consequences of failing to comply with the rules. *See McKinnie v. Roadway Express, Inc.*, 341 F.3d 554, 558 (6th Cir. 2003). The district court therefore did not err in failing to notify Swerchowsky of his response deadline. Moreover, even if Swerchowsky did not receive a copy of the defendants' motion in a timely manner, he had avenues for relief in the district court: he could have either brought the issue to the district court's attention and moved for an extension of time to file his response or raised the issue in a timely post-judgment motion. *See* Fed. R. Civ. P. 6(b), 59(e). He did not do so.

For these reasons, we **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

TGS
Sixth Circuit
Potter Stewart U.S. Courthouse

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Vladimir Alexander L. Swerchowsky,	)	**CASE NO. 1;23 CV 1699**
	)	
Plaintiff,	)	**JUDGE PATRICIA A. GAUGHAN**
	)	
vs.	)	
	)	
U-Haul International, Inc., *et al.*,	)	**Memorandum of Opinion and Order**
	)	
Defendants.	)	

This matter is before the Court upon Defendants' Motion to Dismiss Proceedings and Compel Arbitration (Doc. 8). The motion is filed on behalf of defendants U-Haul International Inc., AMERCO, Edward J. Shoen, and Serena Barth. Plaintiff also named C.T. Corporation System as a defendant. Plaintiff did not name U-Haul Co. of Massachusetts and Ohio, Inc. ("U-Haul"), which, according to defendants, is plaintiff's actual employer. Plaintiff does not oppose defendants' motion.

This case arises out of *pro se* plaintiff's employment with U-Haul. U-Haul is a related entity to the corporate defendants named in the complaint, with the exception of C.T. Corporation System. There are no specific allegations directed at this defendant, but defendants

argue that C.T. Corporation System is simply its statutory agent. Plaintiff does not dispute this fact. Accordingly, plaintiff's claims against C.T. Corporation System are dismissed as there are no facts in the complaint stating a claim against this defendant.

The Court further finds that defendants' motion to compel arbitration and dismiss the complaint is well-taken. Defendants attach an arbitration agreement signed by plaintiff. Defendants argue that all claims in the complaint arise out of plaintiff's employment relationship with U-Haul. In addition, the arbitration agreement governs all of the remaining defendant entities and individuals. Accordingly, all claims and parties are subject to binding arbitration. Plaintiff did not file a brief in opposition and, therefore, offers no argument in response. Accordingly, for the reasons stated in the motion and reply brief, defendants' motion is GRANTED. As all claims are subject to the arbitration agreement, the case is DISMISSED.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 11/30/23

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Vladimir Alexander L. Swerchowsky,	)	**CASE NO. 1;23 CV 1699**
	)	
Plaintiff,	)	**JUDGE PATRICIA A. GAUGHAN**
	)	
vs.	)	
	)	
U-Haul International, Inc., *et al.*,	)	**Order of Dismissal**
	)	
Defendants.	)	

This Court, having GRANTED Defendants' Motion to Dismiss Proceedings and Compel Arbitration (Doc. 8), hereby DISMISSES this matter.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 11/30/23

~~CALL THEM IN THE MORNING~~ TGS
~~TELL THEM YOU DID NOT RECEIVE ANY OPPOSITION RELATED PAPERWORK AND THAT ARBRITRATION WOULD PUT ME IN DIRECT DANGER. I WAS ASSAULTED, I AM INJURED, I WOULD APPEAL OR FILE LATE OPP.~~

No. 24-3007

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

VLADIMIR ALEXANDER L. SWERCHOWSKY,

Plaintiff-Appellant,

v.

U-HAUL INTERNATIONAL, INC., et al,

Defendants-Appellees.

ORDER

BEFORE: GILMAN, GIBBONS, and BLOOMEKATZ, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

Additional material from this filing is available in the Clerk's Office.