APPENDIX

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APPENDIX A.A

FIFTH CIRCUIT COURT OF APPEALS ORDER
DENYING REHEARING

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
September 9, 2025
Lyle W. Cayce
Clerk

No. 25-10445

SHAWN OLALI,

Plaintiff—Appellant,

versus

CVS, INCORPORATED,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:24-CV-203

ON PETITION FOR REHEARING

Before DAVIS, WILSON, and DOUGLAS, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

APPENDIX A.B

FIFTH CIRCUIT COURT OF APPEALS
OPINION

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
August 13, 2025
Lyle W. Cayce
Clerk

No. 25-10445
Summary Calendar

SHAWN OLALI,

Plaintiff—Appellant,

versus

CVS, INCORPORATED,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:24-CV-203

Before DAVIS, WILSON, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

This Title VII civil-rights case was referred to arbitration, and the arbitrator dismissed after finding the demand for arbitration was untimely. The district court confirmed the arbitrator's award under the Federal Arbitration Act in a judgment that we AFFIRM.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

I.

Plaintiff-Appellant Shawn Olali, appearing pro se and in forma pauperis, originally filed this action in the district court against his former employer, Defendant-Appellee CVS Pharmacy, Inc., as a Title VII racial-discrimination case. In May 2024, the parties filed a joint motion to arbitrate the claims, consistent with a CVS Health Arbitration Agreement that Olali signed as part of his employment onboarding. The district court granted the parties' motion, and the case was referred to arbitration.

In the arbitration proceeding, CVS moved to dismiss, arguing the proceeding was not timely filed. The arbitrator agreed and dismissed Olali's claims with prejudice. Olali then moved to reopen the case in the district court, and for vacatur under the Federal Arbitration Act, 9 U.S.C. § 10(a). The district court denied both motions, affirmed the arbitration award, and dismissed Olali's claims with prejudice.

II.

The FAA allows for vacatur of an arbitrator's award in four instances:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and

> definite award upon the subject matter submitted was not made.[1]

Review of an arbitration award is "extraordinarily narrow," and a court "should defer to the arbitrator's decision when possible."[2] Indeed, the FAA presumes that an award will be confirmed and that courts will play only limited roles in reviewing arbitral decisions.[3]

Olali argues the arbitrator's award should be vacated under 9 U.S.C. § 10(a)(3) and (4) for three reasons. First, he contends that the arbitrator exceeded her authority in violation of § 10(a)(4) by "disregarding explicit contractual provisions" and "failing to adhere solely to the substantive law of the courts." Second, he argues that the arbitrator violated § 10(a)(3) by denying him a fair hearing and applying procedural rules "discriminately." Third, he argues under § 10(a)(4) that the arbitral award lacks finality.

In support of his first argument, Olali relies on the provision in the arbitration agreement providing that the arbitrator "will follow the substantive law applicable to the case and may award only those remedies that would have been available had the matter been heard in court." The agreement also states that "[a]ll claims in arbitration are subject to the same statutes of limitation that would apply in court" and that the demand for arbitration must be filed "within the applicable statute of limitations." The arbitrator's award explains that Title VII's 90-day limitations period governs

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[1] 9 U.S.C. § 10(a)(1)–(4).

[2] *Antwine v. Prudential Bache Sec., Inc.*, 899 F.2d 410, 413 (5th Cir. 1990); *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 568 (2013) ("Under the FAA, courts may vacate an arbitrator's decision 'only in very unusual circumstances.'" (quoting *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 942 (1995)).

[3] *See* 9 U.S.C. § 9 (providing that a court "must" confirm an award unless it is vacated, modified, or corrected); *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 587 (2008) (stating that § 9 "carries no hint of flexibility").

the timeliness of Olali's arbitration demand.[4] Because Olali did not file his arbitration demand until 239 days after the EEOC issued a right-to-sue notice, his claim would have been untimely if brought in federal court. This led the arbitrator to conclude that Olali's demand was time barred.[5] The arbitrator relied on several federal district court opinions and other relevant arbitral awards in reaching that conclusion. Olali cites no contrary authority. Instead, he argues the arbitrator violated the agreement by relying on other arbitration awards. He offers no authority in support of this argument and points to no language in the arbitration agreement prohibiting the use of arbitral precedent. We thus agree with the district court that there is no evidence that the arbitrator exceeded her powers or acted beyond those granted by the arbitration agreement.

Olali's second argument—that he was denied a full and fair hearing by the arbitrator—is similarly unsubstantiated. Olali provides no evidence showing that he was deprived of an adequate opportunity to present his case. As the district court correctly observed, the record reflects the opposite: Olali filed a written opposition to CVS's motion to dismiss and a surreply responding to CVS's arguments, and presented oral argument at a hearing before the arbitrator. We agree with the district court that this argument has no merit.

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[4] *See Whitehead v. Reliance Ins. Co.*, 632 F.2d 452, 459 (5th Cir. 1980) ("[T]he 90-day limitations period begins to run upon receipt by the charging party of unambiguous notice that the EEOC's processes have terminated and that the EEOC has decided not to bring suit; the notice need not, however, specifically inform the charging party of his right to file suit within the 90-day limitations period.").

[5] The arbitrator also addressed Olali's alternative argument that his district-court suit tolled limitations period. She determined that Olali's demand for arbitration remained untimely even if tolling was available.

Finally, Olali contends the award lacks finality because the arbitrator left unresolved his breach-of-contract claim. There's no dispute that all claims were submitted to the arbitrator; nor is there a dispute that the arbitrator heard Olali's arguments regarding a breach-of-contract claim before dismissing all his claims with prejudice. That the arbitral award doesn't expressly list a breach-of-contract claim does not render the award non-final or unenforceable under the FAA.[6] We agree with the district court that there was an adequate basis for the award and the decision does not lack finality.

For the foregoing reasons, we AFFIRM the judgment of the district court.

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[6] *See, e.g.*, *Delek Refin., Ltd. v. Local 202, United Steel*, 891 F.3d 566, 572 (5th Cir. 2018) ("[A]mbiguity is not enough to vacate an [arbitration] award."); *Antwine*, 899 F.2d at 412 ("It has long been settled that arbitrators are not required to disclose or explain the reasons underlying an award." (citing *United Steel Workers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 598 (1960))).

APPENDIX A.C

CVS ARBITRATION AGREEMENT

CVS HEALTH ARBITRATION AGREEMENT

1. **Mutual Agreement to Arbitrate Claims.** The employee named below will be referred to here as "Employee," "You" or "Your". CVS Pharmacy, Inc., including its affiliates, successors, subsidiaries and/or parent companies will be referred to here as "CVS" or "Company". Under this Agreement, You and CVS agree that any dispute between You and CVS that is covered by this Agreement ("Covered Claims") will be decided by a single arbitrator through final and binding arbitration only and will not be decided by a court or jury or any other forum, except as otherwise provided in this Agreement.

2. **Claims Covered by this Agreement.** Except as otherwise stated in this Agreement, Covered Claims are any and all claims, disputes or controversies that CVS may have, now or in the future, against You or that You may have, now or in the future, against CVS or one of its employees or agents, arising out of or related to Your employment with CVS or the termination of Your employment. Covered Claims include but are not limited to disputes regarding wages and other forms of compensation, hours of work, meal and rest break periods, seating, expense reimbursement, leaves of absence, harassment, discrimination, retaliation and termination arising under the Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act ("ERISA"), Genetic Information Non-Discrimination Act, and other federal, state and local statutes, regulations and other legal authorities relating to employment. Covered Claims also include disputes arising out of or relating to the validity, enforceability or breach of this Agreement, except as provided in paragraph 6, below, regarding the Class Action Waiver.

3. **Claims Not Covered by this Agreement.** This Agreement does not apply to claims raised in litigation pending as of the date You first received the Agreement or claims by You for workers compensation, state disability insurance or unemployment insurance benefits or claims for benefits under an employee benefit plan. This Agreement does not prevent or excuse You (either individually or together with others) or CVS from using the Company's existing internal procedures for resolution of complaints, and this Agreement is not intended to be a substitute for the use of such procedures. This Agreement does not prohibit You or CVS from filing: a motion in court to compel arbitration; a motion in court for temporary or preliminary injunctive relief in connection with an arbitrable controversy; or an administrative charge or complaint with any federal, state or local office or agency, including but not limited to the U.S. Department of Labor, Equal Employment Opportunity Commission or National Labor Relations Board. Also excluded from this Agreement are disputes that may not be subject to a pre-dispute arbitration agreement as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act or any other binding federal law or legal authority.

4. **Arbitration Proceedings.**

a. **Initiation of a Claim.** All claims in arbitration are subject to the same statutes of limitation that would apply in court. To initiate a claim, You or CVS must make a written demand for arbitration and deliver it (i) by hand or first class mail to the other party and (ii) by hand or first class mail or electronically to the American Arbitration Association ("AAA") within the applicable statute of limitations period. Otherwise, the claim will be waived as provided for by applicable law. An Employee may seek assistance from the AAA regarding the initiation of a claim by calling 877-495-4185 or sending an email to casefiling@adr.org.

b. **The Written Demand.** The written demand for arbitration must: identify the parties; state the legal and factual basis of the claim(s); and state the specific remedy or damages sought. Any written demand for arbitration made to CVS must be directed to the CVS Legal Department (ATTN: VP, Employment Law), One CVS Drive, Woonsocket, RI 02895. Any written demand for arbitration to the Employee will be sent to the last home address on file with the Company. The arbitrator will resolve all disputes regarding the timeliness of the demand for arbitration.

c. **Rules and Procedures.** The arbitration will be administered by the American Arbitration Association ("AAA") and will be conducted in accordance with the Employment Arbitration Rules and Mediation Procedures of the AAA ("AAA Rules") then in effect. The AAA Rules can be found at the AAA website (www.adr.org), by calling the AAA at 800-778-7879, or by requesting a copy from the CVS Human Resources Department. Pursuant to the AAA Rules, the parties will select the arbitrator by mutual agreement and will have the opportunity to conduct discovery, bring dispositive motions, be represented by attorney(s) (or not, as they prefer) and present witnesses and evidence at a hearing. Unless You and CVS agree otherwise, the location of the arbitration hearing will be no more than 45 miles from the place where You are or were last employed by CVS. The Federal Rules of Evidence will apply. The arbitrator will follow the substantive law applicable to the case and may award only those remedies that would have been available had the matter been heard in court. Judgment may be entered on the arbitrator's decision and enforced in any court having jurisdiction.

d. **Costs and Fees.** CVS will pay all costs and expenses charged by the AAA or the arbitrator, including but not limited to the arbitrator's fees, except that, for claims You initiate, You will be responsible to pay the claim initiation fee charged under the AAA Rules; however, if Your claim initiation fee exceeds what a court in the jurisdiction would have charged You for filing a lawsuit based on Your claims, then You will be responsible only for the amount that the court would have charged, and CVS will pay the remaining amount to the AAA. Each party will pay its own litigation costs and attorneys' fees, if any. However, if any party prevails on a claim which affords the prevailing party attorneys' fees and litigation costs, the arbitrator is authorized to award attorneys' fees and/or litigation costs under the same standards a court would apply under applicable law.

5. **Pre-Hearing Mediation.** Prior to the arbitration hearing of any Covered Claim, You and CVS may engage in non-binding mediation under the employment mediation procedures of the AAA. If You and CVS agree to participate in mediation, CVS will pay all fees and costs charged by the AAA or the mediator.

6. **Waiver of Class, Collective and Representative Actions ("Class Action Waiver").** You and CVS agree to bring any Covered Claims in arbitration on an individual basis only; You and CVS waive any right or authority for any Covered Claims to be brought, heard or arbitrated as a class, collective, representative or private attorney general action. The Class Action Waiver does not apply to any claim you bring as a private attorney general solely on your own behalf and not on behalf of or regarding others. Notwithstanding any other provision of this Agreement or the AAA Rules, disputes regarding the validity, enforceability or breach of the Class Action Waiver will be resolved only by a civil court of competent jurisdiction and not by an arbitrator. If, despite this Class Action Waiver, You file or participate in a class, collective or representative action in any forum, You will not be retaliated against, disciplined or threatened with discipline. However, CVS will seek enforcement of this Agreement and the Class Action Waiver under the Federal Arbitration Act and seek dismissal of such class, collective or representative actions or claims.

7. **Your Right to Opt Out of Arbitration.** Arbitration is not a mandatory condition of Your employment at CVS. If You wish, You can opt out of this Agreement for a limited time and, by doing so, not be bound by its terms. To opt out, You must mail a written, signed and dated letter stating clearly that You wish to opt out of this Agreement to CVS Health, P.O. Box 969, Woonsocket, RI 02895. In order to be effective, Your opt out notice must be postmarked no later than **30 days** after the date you agree to the Agreement below.

8. **Other Provisions.**

a. **Adequate Consideration.** Both parties agree that the promises made in this Agreement by You and by CVS to arbitrate disputes, rather than litigate them before courts or other bodies, provide good and sufficient consideration for each other.

b. **Entire Agreement.** This Agreement is the full and complete agreement between You and CVS relating to the formal resolution of Covered Claims. Neither party is relying on any representations, oral or written, about the effect, enforceability or meaning of this Agreement, except as specifically set forth in this Agreement.

c. **Severability.** If any portion of this Agreement is adjudged to be unenforceable, the remainder of this Agreement will remain valid and enforceable. In any case in which (a) a dispute is filed as a class, collective, representative or private attorney general action and (b) a civil court of competent jurisdiction finds part of the Class Action Waiver unenforceable, the action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable will be enforced in arbitration. If the Class Action Waiver is adjudged completely unenforceable, You and CVS agree that this Agreement is otherwise silent as to any party's ability to bring a class, collective or representative action in arbitration.

d. **Governing Law.** This Agreement is governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. and evidences a transaction involving commerce.

e. **Effective Date and Term.** This Agreement takes effect immediately upon agreement by You and, unless you opt out as specified above, survives the termination of employment with CVS.

f. **Non-Retaliation.** It is against CVS policy for any Employee to be subject to retaliation if he or she exercises his or her right to assert claims under this Agreement, to opt out of this Agreement or to challenge this Agreement. If You believe that You have been retaliated against, You should immediately report it to the CVS Human Resources Department or Ethics Line. This Agreement does not in any way alter the at-will employment status between You and CVS.

9. **Statement of Assent and Understanding. By signing below, You acknowledge that You have carefully read this Agreement, that you understand and agree to its terms, that You have had the chance to ask questions about the Agreement, and that you have had or will have the chance to consult with your own legal counsel before the end of the opt out period described above. You enter into the Agreement voluntarily and not in reliance on any promises or representations made by CVS other than those in the Agreement itself. You understand that by agreeing to this Agreement and not opting out, You and CVS are giving up the right to go to court to resolve Covered Claims and giving up the right to bring or participate in a class, collective or representative action brought on behalf of or regarding others on Covered Claims.**

AGREED: CVS Pharmacy, Inc.

Shawn Olali		08/15/2023
Printed Name	Signature	Date

APPENDIX A.D

AAA EMPLOYMENT DUE PROCESS PROTOCOLS

AMERICAN ARBITRATION ASSOCIATION®

Employment Due Process Protocol

The following protocol is offered by the undersigned individuals, members of the Task Force on Alternative Dispute Resolution in Employment, as a means of providing due process in the resolution by mediation and binding arbitration of employment disputes involving statutory rights. The signatories were designated by their respective organizations, but the protocol reflects their personal views and should not be construed as representing the policy of the designating organizations.

Genesis

This Task Force was created by individuals from diverse organizations involved in labor and employment law to examine questions of due process arising out of the use of mediation and arbitration for resolving employment disputes. In this protocol we confine ourselves to statutory disputes.

The members of the Task Force felt that mediation and arbitration of statutory disputes conducted under proper due process safeguards should be encouraged in order to provide expeditious, accessible, inexpensive and fair private enforcement of statutory employment disputes for the 100,000,000 members of the workforce who might not otherwise have ready, effective access to administrative or judicial relief. They also hope that such a system will serve to reduce the delays which now arise out of the huge backlog of cases pending before administrative agencies and courts and that it will help forestall an even greater number of such cases.

A. Pre or Post Dispute Arbitration

The Task Force recognizes the dilemma inherent in the timing of an agreement to mediate and/or arbitrate statutory disputes. It did not achieve consensus on this difficult issue. The views in this spectrum are set forth randomly, as follows:

Employers should be able to create mediation and/or arbitration systems to resolve statutory claims, but any agreement to mediate and/or arbitrate disputes should be informed, voluntary, and not a condition of initial or continued employment.

Employers should have the right to insist on an agreement to mediate and/or arbitrate statutory disputes as a condition of initial or continued employment.

Postponing such an agreement until a dispute actually arises, when there will likely exist a stronger re-disposition to litigate, will result in very few agreements to mediate and/or arbitrate, thus negating the likelihood of effectively utilizing alternative dispute resolution and overcoming the problems of administrative and judicial delays which now plague the system.

Employees should not be permitted to waive their right to judicial relief of statutory claims arising out of the employment relationship for any reason.

Employers should be able to create mediation and/or arbitration systems to resolve statutory claims, but the decision to mediate and/or arbitrate individual cases should not be made until after the dispute arises.

The Task Force takes no position on the timing of agreements to mediate and/or arbitrate statutory employment disputes, though it agrees that such agreements be knowingly made. The focus of this protocol is on standards of exemplary due process.

B. Right of Representation

1. Choice of Representative

Employees considering the use of or, in fact, utilizing mediation and/or arbitration procedures should have the right to be represented by a spokesperson of their own choosing. The mediation and arbitration procedure should so specify and should include reference to institutions which might offer assistance, such as bar associations, legal service associations, civil rights organizations, trade unions, etc.

2. Fees for Representation

The amount and method of payment for representation should be determined between the claimant and the representative. We recommend, however, a number of existing systems which provide employer reimbursement of at least a portion of the employee's attorney fees, especially for lower paid employees. The arbitrator should have the authority to provide for fee reimbursement, in whole or in part, as part of the remedy in accordance with applicable law or in the interests of justice.

3. Access to Information

One of the advantages of arbitration is that there is usually less time and money spent in pre-trial discovery. Adequate but limited pre-trial discovery is to be encouraged and employees should have access to all information reasonably relevant to mediation and/or arbitration of their claims. The employees' representative should also have reasonable pre-hearing and hearing access to all such information and documentation.

Necessary pre-hearing depositions consistent with the expedited nature of arbitration should be available. We also recommend that prior to selection of an arbitrator, each side should be provided with the names, addresses and phone numbers of the representatives of the parties in that arbitrator's six most recent cases to aid them in selection.

C. Mediator and Arbitrator Qualification

1. Roster Membership

Mediators and arbitrators selected for such cases should have skill in the conduct of hearings, knowledge of the statutory issues at stake in the dispute, and familiarity with the workplace and employment environment. The roster of available

mediators and arbitrators should be established on a non-discriminatory basis, diverse by gender, ethnicity, background, experience, etc. to satisfy the parties that their interest and objectives will be respected and fully considered.

Our recommendation is for selection of impartial arbitrators and mediators. We recognize the right of employers and employees to jointly select as mediator and/or arbitrator one in whom both parties have requisite trust, even though not possessing the qualifications here recommended, as most promising to bring finality and to withstand judicial scrutiny. The existing cadre of labor and employment mediators and arbitrators, some lawyers, some not, although skilled in conducting hearings and familiar with the employment milieu is unlikely, without special training, to consistently possess knowledge of the statutory environment in which these disputes arise and of the characteristics of the non-union workplace.

There is a manifest need for mediators and arbitrators with expertise in statutory requirements in the employment field who may, without special training, lack experience in the employment area and in the conduct of arbitration hearings and mediation sessions. Reexamination of rostering eligibility by designating agencies, such as the American Arbitration Association®, may permit the expedited inclusion in the pool of this most valuable source of expertise.

The roster of arbitrators and mediators should contain representatives with all such skills in order to meet the diverse needs of this caseload.

Regardless of their prior experience, mediators and arbitrators on the roster must be independent of bias toward either party. They should reject cases if they believe the procedure lacks requisite due process.

2. Training

The creation of a roster containing the foregoing qualifications dictates the development of a training program to educate existing and potential labor and employment mediators and arbitrators as to the statutes, including substantive, procedural and remedial issues to be confronted and to train experts in the statutes as to employer procedures governing the employment relationship as well as due process and fairness in the conduct and control of arbitration hearings and mediation sessions.

Training in the statutory issues should be provided by the government agencies, bar associations, academic institutions, etc., administered perhaps by the designating agency, such as the AAA®, at various locations throughout the country. Such training should be updated periodically and be required of all mediators and arbitrators. Training in the conduct of mediation and arbitration could be provided by a mentoring program with experienced panelists.

Successful completion of such training would be reflected in the resume or panel cards of the arbitrators supplied to the parties for their selection process.

3. Panel Selection

Upon request of the parties, the designating agency should utilize a list procedure such as that of the AAA or select a panel composed of an odd number of mediators and arbitrators from its roster or pool. The panel cards for such individuals should be submitted to the parties for their perusal prior to alternate striking of the names on the list, resulting in the designation of the remaining mediator and/or arbitrator.

The selection process could empower the designating agency to appoint a mediator and/or arbitrator if the striking procedure is unacceptable or unsuccessful. As noted above, subject to the consent of the parties, the designating agency should provide the names of the parties and their representatives in recent cases decided by the listed arbitrators.

4. Conflicts of Interest

The mediator and arbitrator for a case has a duty to disclose any relationship which might reasonably constitute or be perceived as a conflict of interest. The designated mediator and/or arbitrator should be required to sign an oath provided by the designating agency, if any, affirming the absence of such present or preexisting ties.

5. Authority of the Arbitrator

The arbitrator should be bound by applicable agreements, statutes, regulations and rules of procedure of the designating agency, including the authority to determine the time and place of the hearing, permit reasonable discovery, issue subpoenas, decide arbitrability issues, preserve order and privacy in the hearings, rule on evidentiary matters, determine the close of the hearing and procedures for post-hearing submissions, and issue an award resolving the submitted dispute.

The arbitrator should be empowered to award whatever relief would be available in court under the law. The arbitrator should issue an opinion and award setting forth a summary of the issues, including the type(s) of dispute(s), the damages and/or other relief requested and awarded, a statement of any other issues resolved, and a statement regarding the disposition of any statutory claim(s).

6. Compensation of the Mediator and Arbitrator

Impartiality is best assured by the parties sharing the fees and expenses of the mediator and arbitrator. In cases where the economic condition of a party does not permit equal sharing, the parties should make mutually acceptable arrangements to achieve that goal if at all possible. In the absence of such agreement, the arbitrator should determine allocation of fees. The designating agency, by negotiating the parties' share of costs and collecting such fees, might be able to reduce the bias potential of disparate contributions by forwarding payment to the mediator and/or arbitrator without disclosing the parties' share therein.

D. Scope of Review

The arbitrator's award should be final and binding and the scope of review should be limited.

Dated: May 9, 1995

Signatories

Christopher A. Barreca, *Co-Chair*
Partner
Paul, Hastings, Janofsky & Walker
Rep., Council of Labor & Employment Section
American Bar Association

Max Zimny, *Co-Chair*
General Counsel, International
Ladies' Garment Workers' Union Association
Rep., Council of Labor & Employment Section
American Bar Association

Arnold Zack, Co-Chair
President, Nat. Academy of Arbitrators

Carl E. VerBeek
Management Co-Chair Union Co-Chair
Partner
Varnum Riddering Schmidt & Howlett
Arbitration Committee of Labor & Employment Section
ABA

Robert D. Manning
Angoff, Goldman, Manning, Pyle, Wanger & Hiatt, P.C.
Union Co-Chair
Arbitration Committee of Labor & Employment Section
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Wilma Liebman
Special Assistant to the Director Federal Mediation
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Joseph Garrison, President
National Employment Lawyers Association

Lewis Maltby
Director, Workplace Rights Project
American Civil Liberties Union

APPENDIX A.E

AMERICAN ARBITRATION ASSOCIATION'S
(AAA) AWARD

Case No. 01-24-0006-3094

AMERICAN ARBITRATION ASSOCIATION

Employment Arbitration Tribunal

In the Matter of the Arbitration Between

SHAWN OLALI

Claimant,

vs.

CVS PHARMACY, INC.

Respondent.

ORDER GRANTING MOTION TO DISMISS

BEFORE the Arbitrator is Respondent's Motion to Dismiss Claimant's Demand for Arbitration (the "Motion to Dismiss"), Claimant's Reply to Respondent's Motion to Dismiss (the "Response"), Respondent's Reply in Support of its Motion to Dismiss Claimant's Demand for Arbitration, and Claimant's Surreply to Respondent's Response to Motion to Dismiss. After considering the foregoing and conducting a telephonic hearing on the Motion to Dismiss, at which time both parties participated, the Arbitrator FINDS, CONCLUDES, and ORDERS as follows:

I.
NATURE OF THE CASE

Shawn Olali ("Claimant") was employed by CVS Pharmacy, Inc. ("Respondent") as a shift supervisor at a CVS store in Grapevine, Texas. (*See* Claimant's Demand for Arbitration). After "about a month" of employment, Respondent terminated Claimant's employment in September

2023. In his Demand for Arbitration, Claimant alleges that Respondent terminated him based on his race. Claimant also alleges that Respondent failed to pay him while he was actively employed and did not pay him until after his termination, when he filed a complaint with the "State Department." Claimant asserts claims against Respondent for race discrimination under Title VII and for unpaid wages in violation of federal and state law.

II.
LEGAL ANALYSIS

In his Reply to Respondent's Motion to Dismiss (the "Response"), Claimant alleges, for the first time, that he filed a charge of discrimination with the EEOC and attaches a copy of the EEOC's Determination and Notice of Rights. However, the Arbitrator finds that, even assuming Claimant exhausted his administrative remedies, he failed to timely file his Demand for Arbitration within the ninety-day limitations period. It is undisputed that the EEOC issued its Determination and Notice of Rights on November 6, 2023, and that Claimant did not file his Demand for Arbitration until 239 days later, on July 2, 2024. Moreover, even if the Arbitrator finds that the statute of limitations was tolled while Claimant pursued his claims in court, his Title VII claim is still time barred because he waited too long to file his Demand for Arbitration after the court compelled him to arbitrate. As such, Claimant's Title VII claim should be dismissed as untimely. Finally, Claimant concedes in his Response that he is not asserting claims under the Texas Payday Law, Chapter 61 of the Texas Labor Code, or the FLSA. Accordingly, for these reasons, Claimant's Demand for Arbitration should be dismissed in its entirety.

A. Claimant Failed To Timely Assert His Claims In Arbitration.

Even if Claimant exhausted his administrative remedies with respect to his Title VII claim,

that claim is still subject to dismissal because he failed to timely file his Demand for Arbitration.[1] A claimant asserting a race discrimination claim under Title VII must file suit within ninety (90) days of receiving a notice of dismissal from the EEOC. *Howe v. Yellowbook, USA*, 840 F. Supp. 2d 970, 976 (N.D. Tex. 2011). "This requirement to file a lawsuit within the ninety-day limitation period is strictly construed." *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 379 (5th Cir. 2002). Courts in the Fifth Circuit routinely dismiss cases in which the plaintiff did not file a complaint until after the ninety-day limitation period had expired. *Id.* (citing *Butler v. Orleans Parish Sch. Bd.*, No. Civ. A. 00–0845, 2001 WL 1135616 (E.D. La. Sept. 25, 2001) (dismissing Title VII claims where *pro se* plaintiff filed her complaint one day beyond the ninety-day period).

Here, it is undisputed that the EEOC issued its Determination and Notice of Rights on November 6, 2023.[2] (Claimant's Response, ¶¶ 6, 9 and Attachment 1 (Determination and Notice of Rights).) This Determination and Notice of Rights clearly advises that any lawsuit filed on the charge "must be filed WITHIN 90 DAYS" of Claimant's receipt of the notice or his "right to sue based on this charge will be lost." (*Id.* at Attachment 1 (Determination and Notice of Rights).) Claimant filed his lawsuit in federal district court eighty-five (85) days later, on January 30, 2024. (*Id.*, ¶¶ 7, 9.) Notably, Claimant chose to file his claims in court even though he had executed an Arbitration Agreement just a few months earlier, on August 15, 2023, in which he agreed to

[1] Notably, while Claimant attached to his Response a copy of the EEOC's Determination and Notice of Rights dated November 6, 2023, he did not provide a copy of the charge of discrimination that he filed.

[2] It also appears that Claimant received the EEOC Determination and Notice of Rights on November 6, 2023. (*See* Claimant's Response, ¶ 9). Indeed, the EEOC's response to Respondent's FOIA request shows that on November 6, 2023, the EEOC emailed Claimant that a new document was available to download, and that Claimant downloaded the Closure Letter/NRTS that same day. However, even if the date that Claimant received the EEOC Determination and Notice of Rights is unclear, the Fifth Circuit applies a "presumption that the letter was received three days after the mailing date of the letter." *Garcia v. Penske Logistics, L.L.C.*, 631 Fed. Appx. 204, 208 (5th Cir. 2015) (citing *Jenkins v. City of San Antonio*, 784 F.3d 263, 266–67 (5th Cir.2015)). As such, the Arbitrator may presume that Claimant received the EEOC Determination and Notice of Rights, at the latest, on November 9, 2023.

arbitrate "any and all claims, disputes or controversies that he may have against CVS." While Claimant may have timely filed his Title VII claim in court, he did not file his Demand for Arbitration until July 2, 2024 — 239 days after the EEOC issued its Determination and Notice of Rights. Claimant delayed in initiating arbitration even though the Arbitration Agreement made clear that his claims must be filed in arbitration within the applicable statute of limitations period or would be waived. *See* Arbitration Agreement, at ¶ 4(a) ("All claims in arbitration are subject to the same statutes of limitation that would apply in court."). Further, the Arbitration Agreement clearly instructed Claimant regarding the manner in which to initiate arbitration proceedings:

> **4. Arbitration Proceedings.**
>
> **a. Initiation of a Claim.** *All claims in arbitration are subject to the same statutes of limitation* that would apply in court. To initiate a claim, You or CVS must make a written demand for arbitration and deliver it (i) by hand or first class mail to the other party and (ii) by hand or first class mail or electronically to the American Arbitration Association ("AAA") *within the applicable statute of limitations period. Otherwise, the claim will be waived as provided for by applicable law.* An Employee may seek assistance from the AAA regarding the initiation of a claim by calling 877-495-4185 or sending an email to casefiling@adr.org.
>
> **b. The Written Demand.** The written demand for arbitration must: identify the parties; state the legal and factual basis of the claim(s); and state the specific remedy or damages sought. Any written demand for arbitration made to CVS must be directed to the CVS Legal Department (ATTN: VP, Employment Law), One CVS Drive, Woonsocket, RI 02895. Any written demand for arbitration to the Employee will be sent to the last home address on file with the Company. *The arbitrator will resolve all disputes regarding the timeliness of the demand for arbitration.*

(*See* Arbitration Agreement, at ¶ 4 (emphasis added).)

There is no question that Claimant failed to commence arbitration within the ninety-day limitations period, and that his Title VII claim is subject to dismissal. The case of *Hagan v. Katz Communications, Inc.*, 200 F. Supp. 3d 435 (S.D.N.Y. 2016) is instructive. In *Hagan*, the parties

entered into an employment contract that stated, in part: "any dispute, controversy or claim . . . shall, upon timely written request of either party, be submitted to and resolved by binding arbitration. Any claims received after the applicable/relevant statute of limitations period has passed shall be deemed null and void." *Id.* at 439. After she was terminated, Hagan filed a charge of discrimination with the EEOC. Hagan received a right-to-sue letter from the EEOC on May 17, 2012.

On August 3, 2012, Hagan filed a complaint in federal district court alleging violations of Title VII and the Age Discrimination in Employment Act. The parties then agreed that Hagan's claims were subject to arbitration, and the court discontinued the federal court case. However, Hagan did not file a demand for arbitration until August 1, 2013—441 days after she received her right-to-sue from the EEOC. *See id.* at 440. Katz Communications moved for summary judgment on the basis that Hagan's claims were barred by the statute of limitations. The Arbitrator concluded that Hagan's claims "were time-barred, that no tolling or estoppel doctrines prevented dismissal, and that the discrimination claims should thus be dismissed." *Id.* More specifically, the Arbitrator found that the parties' agreement "mandated that Petitioner file her demand for arbitration within ninety days of her receipt of the right-to-sue letter from the EEOC" and because, to the contrary, Petitioner's demand was not filed until more than fourteen months after she received the right-to-sue letter, her action was untimely. *Id.* at 440-41.

Hagan subsequently sought to vacate the arbitration decision. The District Court denied Hagan's motion, finding that:

> [H]ere, the Arbitrator found that the ninety-day limitations period was mandated by the Employment Agreement because "[a]ny other construction would result in there being no limitations period for commencing an arbitration," which would be contrary to the provision requiring that claims "be received within the applicable/relevant statute of limitations period." . . . The Court finds this reasoning

persuasive.

200 F. Supp. 3d at 444; *see also Anthony v. Affiliated Comp. Servs.*, Case No. 3:12-CV-00964 (CSH), 2014 U.S. Dist. LEXIS 45194, at *2, 3, 8-9 (D. Conn. April 2, 2014), *aff'd* 621 Fed. Appx. 49 (2d Cir. 2015) (upholding dismissal of the plaintiff's demand for arbitration of discrimination claims when it was filed 124 days after issuance of the right to sue).

Prior arbitration decisions also demonstrate that Claimant's claim is untimely. *See, e.g.*, 2011 AAA Employment LEXIS 215 (AAA Oct. 7, 2011) (Nevas, Arb.) (hereinafter "*Arbitration I*"). In *Arbitration I*, the claimant filed timely claims of discrimination with the Connecticut Commission on Human Rights and Opportunities ("CHRO") and the EEOC. The CHRO issued a release of jurisdiction on November 23, 2009, and the EEOC issued a right-to-sue letter on December 3, 2009. *Arbitration I* at *2. However, the claimant did not file a demand for arbitration until March 29, 2011. The respondent moved for summary judgment, arguing that the claimant's Title VII and state law discrimination claims were time-barred because the claimant did not file a demand for arbitration until after the ninety-day limitations period had expired. *Id.* at *4-5. The arbitrator agreed with the respondent and concluded that waiting 478 days after receipt of the EEOC's right-to-sue letter and 488 days from his presumed receipt of the CHRO letter was done in complete disregard of the 90-day statutory deadline, concluding that "[c]laimant egregiously missed the statute of limitations" and could not maintain the claims. *Id.* at *5, 8.

Just as in these cases, the Arbitration Agreement at issue here required that Claimant initiate arbitration within the statute of limitations period. Despite the Arbitration Agreement's unambiguous language, Claimant failed to demand arbitration within 90 days of receiving the EEOC's Determination and Notice of Rights. Instead, he waited 239 days after the EEOC issued its Determination and Notice of Rights and after he received notice of and downloaded that

document. Thus, it is clear that Claimant's Title VII claim is time barred and subject to dismissal.

B. Even If The Arbitrator Concludes That The Limitations Period Was Tolled, Claimant's Title VII Claim Is Still Time-Barred.

Even if the Arbitrator concludes that the ninety-day statutory time limit for filing a claim was tolled while Claimant pursued his claim in court, Claimant's Title VII claim is still untimely because he waited too long after the court compelled him to arbitration to file his Demand for Arbitration with the AAA.

As set forth above, Claimant filed his federal court Complaint on January 30, 2024, eighty-five (85) days after the EEOC issued its Determination and Notice of Rights. After Respondent was served with the lawsuit, Respondent's counsel reminded Claimant that his claims were subject to arbitration pursuant to the Arbitration Agreement that he executed as part of his employment. Claimant agreed to arbitrate his claims and, on May 16, 2024, the parties filed a Joint Motion to Compel Arbitration and Stay Litigation. On May 30, 2024, the District Court issued an Order compelling arbitration and dismissing the federal court case. However, Claimant did not file his Demand for Arbitration until July 2, 2024—33 days after the District Court compelled him to arbitration.[3] Thus, even if the statute of limitations was tolled while Claimant pursued his claims in court, his Demand for Arbitration is still untimely.

The *Kuznesoff v. Finish Line, Inc.* case is instructive. *See* C.A. No. 3:CV-13-02138, 2015 U.S. Dist. LEXIS 71388 (M.D. Pa. June 3, 2015). In *Kuznesoff*, the claimant was assumed to have

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[3] Claimant's allegation that the court compelled the parties to arbitration on June 27, 2024 is incorrect. The court compelled the parties to arbitration in its Order dated May 30, 2024. (*See* Order dated May 30, 2024.) Thereafter, on June 24, 2024, Claimant filed a pleading styled "Motion for New Trial," contending that the District Court should have stayed the litigation pending arbitration instead of ordering dismissal pursuant to the United States Supreme Court's decision in *Smith v. Spizzirri*, 144 S.Ct. 1173 (2024), and also filed a Notice of Appeal with the U.S. Court of Appeals for the Fifth Circuit. On June 27, 2024, the District Court issued an Order staying the case while arbitration is proceeding. (*See* Order dated June 27, 2024). However, notwithstanding these procedural filings, Claimant agreed to arbitrate his claims over a month earlier in May 2024, and the District Court had already compelled him to arbitration on May 30, 2024. However, Claimant delayed in filing his Demand for Arbitration until July 2, 2024.

received the EEOC's May 31, 2013 notice of right to sue on or around June 3, 2013. *Id.*, at *2, 7. On August 12, 2013, the claimant filed his lawsuit in federal court asserting a claim under Title VII. *Id.* at *2. Respondent then informed the claimant that his claims were subject to arbitration and, on September 11, 2013, the federal court case was discontinued. *Id.* at *3. However, the claimant did not file his demand for arbitration with the AAA until over two months later, on November 20, 2013. *Id.* at *4. The arbitrator granted the respondent's motion to dismiss on statute of limitations grounds. *Id.* at *5.

In upholding the arbitrator's decision, the court noted that the claimant's ninety-day statute of limitations would have ended on September 1, 2013, and that claimant's demand for arbitration, filed on November 20, 2013, was past the deadline. *Kuznesoff,* 2015 U.S. Dist. LEXIS 71388, at *7. Even if equitable tolling applied, "the statute of limitations was only equitably tolled during the period when the lawsuit was pending in federal court," and the remaining days of the statute of limitations began to run again when the lawsuit was terminated. *Id.* at *8. The arbitrator determined that the "tolled deadline for filing was October 1, 2013"— extending the September 1, 2013 filing deadline by the 30 days that the claimant's claims were pending in court—and that any employment discrimination claims filed after this time were barred. *Id.* at *8. Notably, in upholding the arbitrator's decision, the court rejected the argument that the statute of limitations was tolled indefinitely once the initial complaint was filed in court. *See id.* at * 9, 10. Thus, even giving Claimant the benefit of tolling while he pursued his claims in court, his Demand for Arbitration, filed 33 days after the court compelled him to arbitration, is still untimely.[4]

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[4] The *Hagan* case provides additional support for this position. While the arbitrator in *Hagan* found that the filing of Hagan's federal court lawsuit did not toll the ninety-day limitations period, both the arbitrator and the District Court determined that even if the pendency of the lawsuit had tolled the limitations period, the claims were still time barred because Hagan waited too long after the discontinuance of her federal court case to file her demand for arbitration. 200 F. Supp. 3d at 441, 444.

In another arbitration before AAA, the arbitrator found discrimination claims untimely under similar circumstances. *See* 2010 AAA Employment LEXIS 122 (AAA Oct. 14, 2010) (Diekemper, Arb.) (hereinafter, "*Arbitration II*"). In *Arbitration II*, the claimant received a notice of right to sue from the Missouri Commission on Human Rights on May 15, 2009, and was required under state law to file suit within ninety days, but no later than two years after her cause of action accrued on August 28, 2007. The claimant filed a petition in state court on June 29, 2009—61 days before the expiration of her limitations period. Shortly thereafter, respondent's counsel e-mailed claimant's counsel a copy of the arbitration policy at issue. After not receiving a response from claimant's counsel, respondent filed a motion to compel arbitration, which was granted on August 28, 2009. On April 30, 2010, the claimant filed her demand for arbitration. The respondent then filed a motion to dismiss or for summary judgment in the arbitration. In response, the claimant argued "that she timely invoked arbitration by filing her claim in court and that the doctrine of equitable tolling and/or equitable estoppel should be applied to save her otherwise untimely filing of her Demand." The arbitrator disagreed with the claimant.

As an initial matter, the arbitrator noted that "to comply with the Employment Arbitration Policy, [c]laimant needed to file her Demand on or before August 28, 2009 [two years after the claim accrued], which she did not do." *Arbitration II* at *5. The arbitrator then rejected each of the claimant's arguments, explaining as follows:

> Dealing first with her claim that timely filing of her suit satisfied her obligation to invoke arbitration, [c]laimant cites no authority to support this assertion and the Arbitrator is aware of none. . . . Dealing next with the equitable estoppel issue, [c]laimant has not established the existence of a necessary element of estoppel, i.e., an inducement of [c]laimant to delay bringing her claim until after the expiration of the statutory period.

Id. at *5-6. Most notably, when rejecting the claimant's "equitable tolling" argument, the arbitrator

expressed doubt whether the doctrine even applied, yet went on to explain: "[a]pplication of the tolling doctrine, however, only extends the time limit by the amount of time the matter was pending in Circuit Court before the motion to compel was granted . . . ." *Id.* at *7. In other words, the clock started to run again when the motion to compel was granted, giving the claimant in that case only 61 days to take action. Because the claimant waited "eight months after the limitations period expired and six months after the time tolled by [her] state court filing had gone by," the arbitrator found that her demand was not timely filed. *Id.* at *7.

The same reasoning applied in *Arbitration II* and *Kuznesoff* should apply here. After the EEOC issued its Determination and Notice of Rights (and Claimant received notice of and downloaded the document), Claimant waited 85 days to file his lawsuit in federal court. Even if the statute of limitations was tolled while Claimant pursued his claims in court, the clock began to run on his statute of limitations again when the court compelled him to arbitration on May 30, 2024. However, Claimant then waited another 33 days—until July 2, 2024, to file his Demand for Arbitration. Given this, there is no question that Claimant's Title VII claim is untimely and should be dismissed.[5]

[5] As discussed above, it appears Claimant received the Determination and Notice of Rights on November 6, 2023, when he received email notice and downloaded the document. However, even assuming he did not receive the Determination and Notice of Rights until three days after it was sent, on November 9, 2023, his Title VII claim was still filed outside of the ninety-day limitations period. Likewise, even if the Arbitrator concludes that the statute of limitations was tolled for an additional three days from June 24, 2024 (when Claimant filed his "Motion for New Trial") until June 27, 2024 (when the Court issued its Order staying the case pending arbitration), Claimant's Title VII claim is still untimely.

To summarize, the chronology of relevant events is as follows:

DATE	EVENT	CITE
September 29, 2023	Claimant alleges that he filed charge of discrimination with the EEOC.	Claimant's Response, ¶ 6.
November 6, 2023	The EEOC issued Determination and Notice of Rights. Claimant received notice of and downloaded the Determination and Notice of Rights. **The 90-day limitations period began to run for Claimant to file his Title VII claims in arbitration.**	Claimant's Response, ¶¶ 6, 9 and Attachment 1 (Determination and Notice of Rights); Exhibit 1 (relevant documents from FOIA response).
January 30, 2024	Claimant files his lawsuit in federal court.	Claimant's Response, ¶¶ 7, 9.
February 4, 2024	**Deadline for Claimant to file his Title VII claim in arbitration.**	90 days from Claimant's receipt of EEOC's Determination and Notice of Rights on November 6, 2023.
May 16, 2024	The parties file a Joint Motion to Compel Arbitration and Stay Litigation.	Exhibit 3 (Joint Motion to Compel Arbitration and Stay Litigation).
May 30, 2024	The District Court issued an Order compelling Claimant to arbitration.	Exhibit 4 (Order, dated May 30, 2024).
June 4, 2024	**Deadline for Claimant to file his Title VII claims in arbitration giving Claimant the benefit of tolling while his claims were pending in federal court.**	Extending the 90-day deadline by the 121 days that Claimant's claims were pending in federal court from January 30, 2024, to May 30, 2024.
July 2, 2024	Claimant filed Demand for Arbitration. This was 239 days after the EEOC issued its Determination and Notice of Rights, and 33 days after the federal court compelled Claimant to arbitration.	Claimant's Response, ¶ 7; Demand for Arbitration.

Accordingly, it is clear that Claimant failed to timely file his Title VII claim in arbitration.

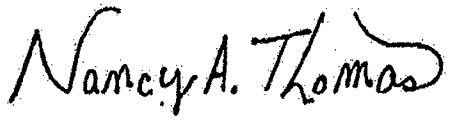
C. Claimant Has Conceded That He Is Not Asserting Claims Under the Texas Payday Act or the Fair Labor Standards Act.

In response to Respondent's arguments that Claimant fails to state claims for unpaid wages under the Texas Payday Act, Chapter 61 of the Texas Labor Code, and the FLSA, Claimant concedes that he is not asserting claims under these statutory provisions. (Claimant's Response, ¶¶ 2, 12, 18-19, 22-23, 25, 28-29). Accordingly, to the extent Claimant's Demand for Arbitration can be construed to assert independent claims for unpaid wages under Texas or federal law, those claims should also be dismissed.

III.
FINAL ORDER

Based upon the foregoing, the Arbitrator finds and concludes that, despite the Arbitration Agreement's clear requirement that all claims be filed within the applicable statute of limitations period, Claimant did not timely file his claims in this arbitration. Further, Claimant concedes that he is not asserting claims under the Texas Payday Act, Chapter 61 of the Texas Labor Code, or the FLSA. Accordingly, the Motion to Dismiss is GRANTED, and Claimant's claims in this arbitration are dismissed with prejudice

SIGNED: December 18, 2024.



Hon. Nancy A. Thomas
Arbitrator

APPENDIX A.F

DISTRICT COURT ORDER AND OPINION
CONFIRMING THE AWARD

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

SHAWN OLALI,

Plaintiff,

v. **No. 4:24-cv-00203-P**

CVS, INC.,

Defendant.

ORDER

Before the Court is the Plaintiff Shawn Olali's Motion to Vacate the Arbitrator's Award (ECF No. 37) and Motion to Reopen Case (ECF No. 32). Having considered the Motions, relevant docket filings, and applicable law, the Court will **DENY** both Motions.

BACKGROUND

This case arises out of alleged racial discrimination in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). *See* ECF No. 7. Olali filed his Amended Complaint, which is the live pleading in this case, on February 8, 2024. *Id.* On May 16, 2024, the Parties filed a joint motion to arbitrate the claims found in the Amended Complaint as required by the CVS Health Arbitration Agreement ("Arbitration Agreement"). ECF No. 20. On May 30, 2024, the Court granted the Parties' motion and referred the case to arbitration. ECF No. 23.

At arbitration, CVS Inc. ("CVS") filed a motion to dismiss. On December 18, 2024, the Arbitrator, Hon. Nancy A. Thomas, granted the motion to dismiss and dismissed all of Plaintiff's claims with prejudice. *See* ECF No. 43, Ex. A.

On February 27, 2025, Olali filed the Motion to Reopen Case. ECF No. 32. The next day, Olali filed a Notice of Intent to File Motion for Vacatur Pursuant to 9 U.S. Code § 10 of the Federal Arbitration Act ("FAA"). ECF No. 35. Based on this Notice, the Court ordered that the Motion be filed on or before March 10, 2025. ECF No. 36. While Olali

filed his Motion on March 7, 2025, the accompanying brief was not filed until March 11, 2025, after the deadline had passed. ECF No. 42. Notwithstanding its untimeliness, the Court now considers Olali's Motion to Vacate. The Court will also consider Olali's Motion to Reopen Case.

LEGAL STANDARD

The FAA allows for vacatur of an arbitrator's award in four instances:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a) (quotations omitted).

Review of an arbitrator's award is "extraordinarily narrow," and the Fifth Circuit has recognized that courts "should defer to the arbitrator's decision when possible." *Rodgers v. U.S. Auto. Ass'n*, Case No. 21-50606, 2022 WL 2610234, at *2 (5th Cir. July 8, 2022) (citation omitted); *Parker v. ETB Mgmt., LLC*, 667 F. App'x 850, 851 (5th Cir. 2016) ("In order to maintain 'arbitration's essential virtue of resolving disputes straightaway,' the court only engages in a 'limited review' of arbitration decisions.") (citation omitted). A plaintiff has the burden of proof in vacating an arbitrator's award, and courts "must resolve any doubts or uncertainties in favor or upholding the award." *Walker v. Ameriprise Fin. Servs., Inc.*, No. 3:18-cv-01675-M, 2018 WL 10560518, at *3 (N.D. Tex. Nov. 29, 2018), *aff'd*, 787 F. App'x 211 (5th Cir. 2019).

ANALYSIS

The Court will first address Olali's Motion to Vacate. Finding that the Motion to Vacate has no merit, the Court will then address Olali's Motion to Reopen Case.

A. Motion to Vacate

Olali makes three arguments in support of vacating the arbitrator's award. *First*, that the arbitrator exceeded her authority under 9 U.S.C. 10(a)(4) by "disregarding explicit contractual provisions" and "failing to adhere solely to the substantive law of the courts."[1] *Second*, that the arbitrator engaged in misconduct under 9 U.S.C. 10(a)(3) "by depriving Plaintiff of a fair hearing, violating AAA Rule 8, and applying procedural rules discriminately."[2] And *third*, that the arbitrator's award "lacks finality and is unenforceable under 9 U.S.C. § 10(a)(4)."[3] Each will be addressed.

1. Disregard for Contractual Provisions and Failure to Adhere to Law

Olali first contends that the Arbitrator disregarded contractual provisions and failed to adhere to the law of the courts. In support, Olali claims that that Arbitrator applied a "different procedural limitation not applicable in any court," which violated the Arbitration Agreement.[4] "Arbitrators exceed their powers if they act contrary to express contractual provisions governing the arbitration." *Walker*, 2018 WL 10560518, at *3.

There is no evidence that the Arbitrator exceeded her powers under the Arbitration Agreement. Here, the Arbitration Agreement stated that the Arbitrator "will follow the substantive law applicable to the case and may award only those remedies that would have been available had the matter been heard in court."[5] The Agreement further states that "[a]ll claims in arbitration are subject to the same statutes of limitations that

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[1]ECF No. 37 at 1.
[2]*Id.*
[3]*Id.*
[4]*See id.* at 4.
[5]*See* ECF No. 43, Ex. B ¶ 4(c).

would apply in court" and that the demand for arbitration must be filed "within the applicable statute of limitations period."[6] In the order granting dismissal, the Arbitrator dismissed Olali's Title VII claim on the grounds that it was not timely.[7] The order explained that the same ninety-day statute of limitations that would prohibit Olali's claim in court applied in arbitration.[8] And because Olali waited until 239 days after the EEOC issued its Determination and Notice of Rights, Olali did not file with the statute of limitations period.[9] Because the Arbitrator acted properly within the Arbitration Agreement, she did not exceed her powers.

2. Depriving Plaintiff of Hearing

Second, Olali argues that award should be vacated because the Arbitrator engaged in misconduct. In support, Olali says that he was deprived of a fair hearing.[10] "To constitute misconduct requiring vacation of an award, an error in the arbitrator's determination must be one that is not simply an error of law, but which so affects the rights of a party that it may be said that he was deprived of a fair hearing." *Rainier DSC 1, L.L.C., et al. v. Rainier Cap. Mgmt., L.P.*, 828 F.3d 362, 364 (5th Cir. 2016).

Like the argument concerning the Arbitrator exceeding her powers, the argument that the Arbitrator engaged in misconduct is without evidence. Contrary to Olali's position, he was given ample opportunity to present his case in arbitration. Once CVS filed a motion to dismiss, Olali filed a response and surreply responding to CVS's arguments. The Parties were also granted time for oral argument at a hearing before the Arbitrator. Thus, the Arbitrator did not deprive Olali of a fair hearing or engage in any misconduct.

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[6] *Id.* at ¶ 4(a).
[7] *See* ECF No. 43, Ex. A at 4.
[8] *Id.* at 4–5.
[9] *Id.* at 4.
[10] ECF No. 37 at 1.

3. Lack of Finality and Enforceability

Third, Olali asserts that the award should be vacated because it lacks finality. In support, Olali says "the arbitrator failed to address all submitted claims" such as his breach of contract claim.[11] "If an arbitrator's decision rests on an adequate basis, then complaints that the tribunal failed to address all issues presented will not render the proceedings 'fundamentally unfair' or justify disturbing the award." *Saipem Am., Inc. v. Wellingotn Underwriting Agencies, Ltd.*, No. 4:07-CV-03080, 2008 WL 2276210, at *1 (S.D. Tex. Mar. 18, 2008), *aff'd sub nom. Saipem Am. v. Wellington Underwriting Agencies Ltd.*, 335 Fed. Appx. 377 (5th Cir. 2009).

As discussed above, the Arbitrator's decision was within the power provided by the Arbitration Agreement. Additionally, the Arbitrator's order discussed Olali's breach of contract, and the claim was discussed at the hearing on oral argument—this much is admitted by Olali.[12] Therefore, the Court concludes that there was an adequate basis for the Arbitrator's decision and the decision does not lack finality.

B. Motion to Reopen

Having found that there is no basis for vacating the Arbitrator's award, there is no reason to reopen this case. Therefore, Olali's Motion to Reopen is **DENIED**.

CONCLUSION

Given the reasons stated above, the Court **DENIES** both Olali's Motions to Vacate and Olali's Motion to Reopen and **AFFIRMS** the arbitration award. Because the arbitration award is final and binding, Olali's claims in this case are hereby **DISMISSED** with prejudice.

SO ORDERED on this **24th day of March 2025.**

Mark T. Pittman
UNITED STATES DISTRICT JUDGE

[11] *Id.* at 11.
[12] ECF No. 42 at 29.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

SHAWN OLALI,

Plaintiff,

v. **No. 4:24-cv-00203-P**

CVS, INC.,

Defendant.

FINAL JUDGMENT

This final judgment is issued pursuant to Federal Rule of Civil Procedure 58(a). In accordance with the Court's Order (ECF No. 45), this case is **DISMISSED with prejudice**. The Clerk of the Court shall transmit a true copy of this judgment to the parties.

SO ORDERED on this **24th day of March 2025.**

Mark T. Pittman
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

SHAWN OLALI,

Plaintiff,

v. **No. 4:24-cv-00203-P**

CVS, INC.,

Defendant.

ORDER

Before the Court is Plaintiff Shawn Olali's Second Motion for New Trial (ECF No. 47) and Motion to Amend the Second Motion for a New Trial (ECF No. 49). The Court **GRANTS** Olali's Motion to Amend, and reviews both filings for Olali's Motion for a New Trial. Having considered the Motion for a New Trial, relevant docket filings, and applicable law, the Court hereby **DENIES** the Motion.

In his Motion, Olali points to Local Rule 7.1(e) for support that his brief was timely. N.D. TEX. R. 7.1(e). Local Rule 7.1(e) refers to time for a "Response and Brief" to a motion, it therefore has no bearing on whether Olali filed his motion on time. Nonetheless, the Court's Order denying Olali's Motion to Vacate made clear that the untimeliness did not stop the Court from considering the Motion. *See* ECF No. 45 at 2.

As for the Court's denial of Olali's Motion to File Oversized Brief (ECF No. 41), Olali failed, and continues to fail, to demonstrate any articulable "extraordinary and compelling reasons" why such a motion should be granted. N.D. TEX. R. 7.2(c). All Olali can claim is that disallowing the excess pages had an "adverse impact." ECF No. 49.

Lastly, Olali has filed an appeal in this case. ECF No. 48. And "[i]t is well established that once a party files a notice of appeal, the district court no longer has jurisdiction over the case." *Allard v. Anderson*, 260 F. App'x 711 (5th Cir. 2007). Therefore, this Court no longer maintains jurisdiction.

SO ORDERED on this **25th day of March 2025.**

Mark T. Pittman
UNITED STATES DISTRICT JUDGE

APPENDIX A.H

DISTRICT COURT STAYING PROCEEDINGS

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

SHAWN OLALI,

Plaintiff,

v. **No. 4:24-cv-00203-P**

CVS, INC,

Defendant.

ORDER

Plaintiff Shawn Olali has filed a motion for a new trial and has notified this Court that he has appealed this Court's Final Judgment. ECF Nos. 25, 27.

"The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *see also Moore v. Tangipahoa Parish Sch. Bd.*, 836 F.3d 503, 504 (5th Cir. 2016) (per curiam) ("A timely notice of appeal divests the district court's jurisdiction. . ."). (citing *Lopez Dominguez v. Gulf Coast Marine & Assocs., Inc.*, 607 F.3d 1066, 1073-74 (5th Cir. 2010)). Federal Rule of Civil Procedure 62.1 provides a means by which a district court may exercise its discretion to entertain a motion for relief over which it otherwise lacks jurisdiction because of a pending appeal. *See Bandi v. Becnel*, No. 15-2014, 2016 WL 8716652, at * 2 n. 2 (E.D. La. Mar. 15, 2016). In relevant part, it states:

> (a) Relief Pending Appeal. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:
>
> (1) defer considering the motion;
>
> (2) deny the motion; or

> (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

FED. R. CIV. P. 62.1(a); *see also A Pty Ltd. v. Homeaway, Inc.*, No. 1:15-CV-158 RP, 2016 WL 4218385, at *1 (W.D. Tex. Aug. 9, 2016) ("[Rule 62.1] outlines when a district court may entertain a motion for relief that is otherwise barred by a pending appeal.").

The purpose of a Rule 62.1 indicative ruling "is to allow [the court of appeals] to remand the case if [it] deem[s] it 'useful to decide the motion before [deciding] the pending appeal.'" *Matter of Bandi*, 676 F. App'x 290, 292 (5th Cir. 2017). If a district court proceeds under Rule 62.1(a)(3), "the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal." FED. R. APP. P. 12.1(b). "The district court may decide the motion if the court of appeals remands for that purpose." FED. R. CIV. P. 62.1(c).

Plaintiff seeks a "new trial" on the notion that this Court improperly dismissed this case when it should have stayed it after granting a joint motion to compel arbitration. *See* ECF No. 25. Upon review, Plaintiff is correct that a few days before the United States Magistrate made a recommendation of dismissal in this case, the Supreme Court clarified its stance on staying versus dismissing cases that are sent to arbitration. *See Smith v. Spizzirri*, 144 S. Ct. 1173, 1177 (2024) (When a federal court finds that a dispute is subject to arbitration under FAA, and a party has requested a stay of the court proceeding pending arbitration, the court does not have discretion to dismiss the suit on the basis that all the claims are subject to arbitration; rather, the FAA compels the court to stay the proceeding).

For this reason, the Court erred in dismissing the suit rather than staying and administratively closing it pending the Parties' arbitration. If the Fifth Circuit were to remand the case, the Court would **GRANT** Plaintiff's Motion (ECF No. 25) to Stay the Proceedings, strike its dismissal of the suit, and instead **STAY** and **ADMINISTRATIVELY CLOSE** the case pending the arbitration. The Court exercises its

discretion under Rule 62.1(a)(3) to act on Plaintiff's motion despite the appeal.

Accordingly, the Court **INSTRUCTS** the Clerk to send a copy of this Order to the Fifth Circuit to accompany the Appeal sent by Plaintiff.

SO ORDERED on this **25th day of June 2024.**

Mark T. Pittman
UNITED STATED DISTRICT JUDGE

APPENDIX A.I

PLAINTIFF ARBITRATIOM DEMAND

AMERICAN ARBITRATION ASSOCIATION

SHAWN OLALI,	
Claimant,	**NO.** _____
v.	
CVS PHARMACY INC.,	
Respondent.	

CLAIMANT'S DEMAND FOR ARBITRATION

Mr. Olali, for there demand for arbitration, states as follows

I. SUMMARY

1. Shawn Olali, the claimant worked at a CVS Pharmacy in Grapevine, Texas on Hall-Johnson Road. The claimant was hired as a shift supervisor by the Store Manager, Tiffany. Mr. Olali worked at the location for about a month and never received any complaints regarding his work performance or attendance.

2. Shortly after being employed at CVS Pharmacy on Hall-Johnson Road, the claimant was contacted by human resources that Mr. Olali was subject to a disciplinary investigation that focused or honed in on his perceived inherent characteristics and not his work ethic or performance. Mr. Olali was subject to discipline because of "short" responses without any specific act or reason stated. The claimant is subjected to discipline that hones in on his inherent qualities and is not based on or indicative (as they do not entail such) of said persons actual abilities or work performance.

3. CVS Pharmacy does not have a written policy that explicitly prohibits such conduct. CVS Pharmacy Inc., Tiffany, subjected Mr. Olali to different terms of employment.

28. CVS Pharmacy Inc.'s actions were intentional and done with malice and CVS Pharmacy Inc. would not have paid the claimant absent of action by the State Department.

29. CVS Pharmacy Inc.'s actions and indifference have harmed the complainant.

V. PRAYER FOR RELIEF

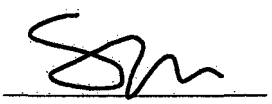
WHEREFORE, The claimant respectfully requests as follows:

1. That the arbitrator enter an order for loss of future income and interest. Damages for mental anguish and emotional distress due to termination and loss of income including default, periodic financial distress. and reputational harm. As well as for exemplary damages due to respondents indifference and intentional discriminatory actions of harm for $300,000.

2. That the arbitrator enter an order for damages as a result of intentional acts of harm in violation of wage laws, and breach of contract for $300,000.

3. That the arbitrator enter an order for costs in this action and attorney's fees incurred in pursuing this action.

Respectfully submitted,



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Pro Se
July 2nd, 2024

APPENDIX A.J

PLAINTIFF'S SURREPLY

CVS or one of its employees or agents, arising out of or related to Your employment with CVS or the termination of Your employment. Covered Claims include but are not limited to disputes regarding wages and other forms of compensation, hours of work, meal and rest break periods, seating, expense reimbursement, leaves of absence, harassment, discrimination, retaliation and termination arising under the Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, Employee Retirement Income Security Act ("ERISA"), Genetic Information Non-Discrimination Act, and other federal, state and local statutes, regulations and other legal authorities relating to employment. Covered Claims also include disputes arising out of or relating to the validity, enforceability or breach of this Agreement, except as provided in paragraph 6, below, regarding the Class Action Waiver.

3. Claims Not Covered by this Agreement. This Agreement does not apply to claims raised in litigation pending as of the date You first received the Agreement or claims by You for workers compensation, state disability insurance or unemployment insurance benefits or claims for benefits under an employee benefit plan. This Agreement does not prevent or excuse You (either individually or together with others) or CVS from using the Company's existing internal procedures for resolution of complaints, and this Agreement is not intended to be a substitute for the use of such procedures. This Agreement does not prohibit You or CVS from filing: a motion in court to compel arbitration; a motion in court for temporary or preliminary injunctive relief in connection with an arbitrable controversy; or an administrative charge or complaint with any federal, state or local office or agency, including but not limited to the U.S. Department of Labor, Equal Employment Opportunity Commission or National Labor Relations Board. Also excluded from this Agreement are disputes that may not be subject to a pre-dispute arbitration agreement as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act or any other binding federal law or legal authority. "

11. For the arbitrator to determine otherwise would be a great injustice and clear cause of concern regarding the arbitrators decision.

12. Not only would any determination that there was no employment agreement, employment, or any other signed document preclude/bar the arbitrator of any authority over the suit or parties. The actions of the respondent would be highly illegal and the claimant would need to amend the complaint to address accusations of "high crimes".

13. If the arbitrator could find that:

- There was an employment "agreement" or that the respondent, CVS Pharmacy Inc., did make promises and terms of a valid and enforceable

agreement regarding the scope of employment that were violated as a result of intentional acts of harm, and

- that a finding of guilt under a breach of contract or, more specifically, a tortious breach of contract could/would result in a claim for more than those offered under the TWC (such as unpaid wages, unpaid minimum-wages, and/or liquidated relief).

14. Then the arbitrator should wholly deny the motion to dismiss.

IV. FACTS OF THE CASE

12. The respondent misleadingly proclaims the facts of the case. It is true that the matter was compelled to arbitration on that day but the case was appealed and the court thereafter the appeal granted a partial motion for new trial. After the judge granted the partial motion for new trial, the claimant initiated arbitration with the AAA only 5 days afterwards. The US Supreme Court has established that the matter is tolled during pendency and during the time when an appeal can be taken which is a fair timeline for both parties. Not to mention that the order struck parts of the initial order from the record.

13. The respondent's interpretation of legal precedent is inconsistent with and adverse to legislative intent. In the current case, an appeal of the final disposition of a case, when sought by a claimant, would be considered a waste of diligence on the part of the claimant and unfair to the defendant. Such an interpretation would be wholly inconsistent with past precedent and adverse to the interest of justice and fairness to both parties.

20. Here, the claimant filed only 5 days after the partial motion for new trial was granted.

DATE	EVENT	RESPONDENT	CITATION	CLAIMANT	CITATION
August 13-18, 2024	Date of Hire, Sign	The claimant was clearly told		Respondent Never	