NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4324-13T1

TD BANK, N.A., successor
by merger to COMMERCE
BANK, N.A.,

Plaintiff-Respondents,

v.

WILLIAM E. JASKO, JENNY L.
JASKO, WJJ MONTGOMERY FAMILY
LIMITED PARTNERSHIP, WJJ 75
WYANDEMERE FAMILY LIMITED
PARTNERSHIP, WJJ E. TOLEDO
FAMILY LIMITED PARTNERSHIP,
WJJ VINCENT FAMILY LIMITED
PARTNERSHIP, WJJ ATLANTIC
FAMILY LIMITED PARTNERSHIP,
WJJ PLEASANT BEACH-MAPLE
FAMILY LIMITED PARTNERSHIP,
WJJ PLEASANT BEACH FAMILY
LIMITED PARTNERSHIP, and
WJJ SEAVIEW FAMILY LIMITED
PARTNERSHIP,

Defendant-Appellants,

and

WILLIAM A. JASKO, DANIEL
J. JASKO, DAVID W.M. JASKO,
STEPHEN J.K. JASKO, BETHANY
J.M. JASKO, THOMAS J.E.T. JASKO,

Defendants.
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Submitted July 21, 2015 – Decided August 25, 2015

Before Judges Kennedy and Hoffman.

On appeal from Superior Court of New Jersey, Law Division, Camden County, Docket No. L-3565-12.

Perry Liss, attorney for appellants.

Brown & Connery, LLP, attorneys for respondent (Paul Mainardi and Jennifer A. Harris, on the brief).

PER CURIAM

Defendants William E. Jasko ("William"), Jenny Jasko ("Jenny"), and various family limited partnerships ("FLPs") appeal from an April 11, 2014 order granting confirmation of an arbitration award in favor of plaintiff TD Bank, N.A. Defendants contend that the Law Division confirmed the award in error because their demand for trial de novo substantially complied with the service requirement of Rule 4:21A-6. We disagree and affirm.

I.

In 2009, plaintiff sued defendant William to enforce unpaid loan obligations. On August 5, 2009, final judgment by default was entered in favor of plaintiff against William in the amount of $1,521,061.80, plus interest and counsel fees. During post-judgment collection efforts, plaintiff learned that William had transferred substantially all of his assets to various FLPs.

On August 15, 2012, plaintiff filed a complaint against William and Jenny and eight FLPs, as well as seven Jasko children. The complaint alleged fraud, civil conspiracy, and

other related claims. The matter was arbitrated on February 3, 2014, and the arbitrator entered an award in plaintiff's favor against William, Jenny, and the eight FLPs in the amount of $1,367,427.93, but provided that Jenny "is liable for only $815,000 plus interest. The Jasko children . . . have no liability."

On February 27, 2014, defendant prepared an "appeal from arbitration award," requesting a trial de novo. This notice was received by the court and stamped on March 4, 2014. The thirty-day service requirement of Rule 4:21A-6 passed on March 5, 2014.

On March 6, 2014 counsel for defendants sent opposing counsel the following email:

> I apologize I forgot to email you both last week when we sent the appeal in, but I just wanted to make sure you knew that we did appeal the arbitration ruling. We sent in that notice of appeal to the [c]ourt on 2/27/14. I haven't received anything back from the court yet so I assume neither of you did as well. I'll contact you both if and when I hear anything. Thanks and have a great day.

On March 12, 2014, counsel for defendants finally served opposing counsel with a copy of the demand for trial de novo. On March 13, 2014, plaintiff filed a motion to confirm the arbitration award. Defendant opposed the motion and relied upon a defense counsel's certification, which stated, "I believe that my office had sent copies of the [n]otice of [a]ppeal to [opposing counsel] on February 28th when I was out of town,

however, my assistant mistakenly did not send that [n]otice." During oral argument, defense counsel claimed the reason for the delay in service was that "there were computer problems in the office. The servers were down. Our secretary did not have access to her computer for a few days." When the court asked why defendant did not fax the form, defense counsel replied, "I do not know why it was not faxed."

The court determined that the reasons for the delay were insufficient, and that defendants failed to substantially comply with the service requirement in Rule 4:21A-6. On April 11, 2014, the court entered an order confirming the arbitration award.

On appeal, defendants contend that the motion judge erred by failing to relax the requirements for service of the demand for a trial de novo, arguing that they substantially complied with the requirements of Rule 4:21A-6.

II.

Pursuant to Rule 4:21A-6, a party may obtain a trial de novo following nonbinding arbitration if, "within 30 days after filing of the arbitration award, a party thereto files with the civil division manager and serves on all other parties a notice of rejection of the award and demand for a trial de novo . . . ." R. 4:21A-6(b)(1). The express language of this rule provides that both filing and service of the demand must be

accomplished within thirty days of the entry of an arbitration award. Ibid.

We have held that the thirty-day requirement for serving a demand for a trial de novo should be "strictly enforced . . . ." Jones v. First Nat'l Supermarkets, 329 N.J. Super. 125, 127 (App. Div.), certif. denied, 165 N.J. 132 (2000). Nevertheless, the requirement "may be relaxed upon a showing of good cause and the absence of prejudice," Flett Assocs. v. S.D. Catalano, Inc., 361 N.J. Super. 127, 134 (App. Div. 2003), or upon a showing of substantial compliance, Corcoran v. St. Peter's Med. Ctr., 339 N.J. Super. 337, 343 (App. Div. 2001).

In order to establish substantial compliance with the requirements of a statute or court rule, a party must show:

> (1) the lack of prejudice to the defending party; (2) a series of steps taken to comply with the statute involved; (3) a general compliance with the purpose of the statute; (4) a reasonable notice of petitioner's claim, and (5) a reasonable explanation why there was not a strict compliance with the statute.
>
> [Ibid. (quoting Cornblatt v. Barow, 153 N.J. 218, 239 (1998)).]

Defendants rely upon Flett Associates, 361 N.J. Super. 127, and Nascimento v. King, 381 N.J. Super. 593 (App. Div. 2005); however, such reliance is misplaced. In Flett Associates, relaxation of the service requirement was granted based on a showing that the secretary who served the appeal notice suffered

a disabling injury. Flett Assocs., supra, 361 N.J. Super. at 134. In Nascimento, while a timely notice was not served on the plaintiff, a deposition notice was sent by mistake. Nascimento, supra, 381 N.J. Super. at 600. We concluded that "either the notice was mailed but went astray in the post office, or [the secretary] accidentally put the wrong document in the envelope." Ibid.

Here, there was no showing sufficient to extend the time requirement for service. Clearly the failure to serve the notice was due to oversight, which is not a sufficient basis for relaxation of the time constraint. In order for a court to relax the service requirement there must be a "reasonable explanation" for the mistake. Corcoran, supra, 339 N.J. Super. at 344.

We conclude that defendants have not established substantial compliance with Rule 4:21A-6(b)(1). As noted, a party attempting to demonstrate substantial compliance must show, among other elements of the doctrine, a reasonable explanation as to why there was not strict compliance and that the party took steps to comply with the rule. Corcoran, supra, 339 N.J. Super. at 343. Plaintiffs in this case took no steps to comply with the service requirement of the rule within the thirty-day period and offered an insufficient explanation as to why no steps were taken.

We conclude that the motion judge correctly determined that defendants failed to serve their notice on plaintiff's counsel within the time required by Rule 4:21A-6(b)(1), and did not establish substantial compliance with the rule's service requirement.

Affirm.