

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PAMELA HERRINGTON,
individually and on behalf of all
others similarly situated,

Plaintiff,

v.

WATERSTONE MORTGAGE CORPORATION,

Defendant.

ORDER

11-cv-779-bbc

This case for overtime pay is before the court a second time. The first time I granted defendant Waterstone Mortgage Corporation's motion to dismiss the case in light of an arbitration clause in its employment contract with plaintiff Pamela Herrington. Now defendant seeks to reopen the case to challenge a preliminary order of the arbitrator that allowed plaintiff to proceed as a class. Dkt. ##60 and 61. After the parties finished briefing that issue, defendant filed a motion to vacate another order of the arbitrator that limits the communication defendant may have with potential class members. Dkt. #64.

Missing from any of defendant's briefs is a meaningful discussion of the court's authority to review these decisions now. Defendant cites 9 U.S.C. § 10(a)(4) in its opening brief, but that is a statute for vacating an *award*. Smart v. International Brotherhood of Electrical Workers, Local 702, 315 F.3d 721, 725 (7th Cir. 2002) ("The purpose of [§

10(a)(4)] is merely to render unenforceable an arbitration award that is either incomplete in the sense that the arbitrators did not complete their assignment (though they thought they had) or so badly drafted that the party against whom the award runs doesn't know how to comply with it.”). There has been no award in this case.

In addition, defendant notes that the arbitrator stayed the proceedings to give defendant an opportunity to file an appeal. However, defendant cites no authority for the proposition that the arbitrator can give one party the right to file an interlocutory appeal that otherwise would not exist.

Plaintiff raises this issue, but not until her brief in opposition to defendant’s more recent motion to vacate. Because no reply brief was scheduled for that motion, defendant has not yet responded to the argument. Accordingly, I will give defendant an opportunity to address this issue.

ORDER

IT IS ORDERED that defendant Waterstone Mortgage Corporation may have until November 13, 2012, to file supplemental materials showing that this court has authority to review the two decisions discussed in this order before the arbitrator makes an award. Plaintiff Pamela Herrington may have until November 20, 2012 to file a response. If

defendant does not respond by November 13, I will deny the motion to reopen.

Entered this 5th day of November, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge