

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 15 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ETTA M. COLLIER,

Plaintiff - Appellant,

v.

STATE OF NEW YORK; et al.,

Defendants,

and

SEARS, ROEBUCK AND CO.,

Defendant - Appellee.

No. 07-55474

D.C. No. CV-06-02569-MMM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Margaret M. Morrow, District Judge, Presiding

Submitted December 17, 2008**

Before: WALLACE, TROTT, and RYMER, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Etta M. Collier appeals pro se from the district court's *sua sponte* summary judgment for defendant in her diversity action challenging an arbitration award. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Guerin v. Winston Indus., Inc.*, 316 F.3d 879, 882 (9th Cir. 2002). We affirm.

The district court properly granted summary judgment because Collier waived any challenge to the arbitration agreement after initiating, and fully participating in, arbitration proceedings. *See Nghiem v. NEC Elec., Inc.*, 25 F.3d 1437, 1440 (9th Cir. 1994) (“[A] party may not submit a claim to arbitration and then challenge the authority of the arbitrator to act after receiving an unfavorable result.”); *see also United States v. 14.02 Acres of Land*, No. 05-17347, 2008 WL 4684091, at *9 (9th Cir. Oct. 24, 2008) (concluding that *sua sponte* summary judgment is appropriate where there are no outstanding issues of fact and where the losing party had reasonable notice that the sufficiency of his claims will be in issue). Further, the district court properly concluded that Collier did not meet the statutory requirements to vacate or modify the arbitrator's decision. *See* 9 U.S.C. §§ 10, 11; *see also Kyocera Corp. v. Prudential-Bache Trade Servs.*, 341 F.3d 987, 997-98 (9th Cir. 2003) (a court may only modify or vacate an arbitration award to “correct a technical error, . . . strike all or a portion of an award pertaining to an issue not at all subject to arbitration, and . . . vacate an award that evidences

affirmative misconduct in the arbitral process or final result that is completely irrational or exhibits a manifest disregard for the law.”).

Collier’s remaining contentions are unpersuasive.

AFFIRMED.