**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**CAR CREDIT, INC.,**
**RESPONDENT**

**vs.**

**CATHY L. PITTS,**
**APPELLANT**

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DOCKET NUMBER WD84054

DATE: AUGUST 24, 2021

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Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Jennifer M. Phillips, Judge

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Appellate Judges:

Division Three: Edward R. Ardini, Jr., Presiding Judge, Mark D. Pfeiffer. Judge and W. Douglas Thomson, Judge

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Attorneys:

Benjamin S. McIntosh, for Respondent

Martin L. Daesch, for Appellant

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**CAR CREDIT, INC., RESPONDENT,**
**v.**
**CATHY L. PITTS, APPELLANT.**

WD84054 Jackson County

Before Division Three Judges: Edward R. Ardini, Jr., Presiding Judge, Mark D. Pfeiffer, Judge, and W. Douglas Thomson, Judge

In 2011, Appellant Cathy Pitts entered into a contract with Respondent Car Credit, Inc. for the purchase and financing of an automobile. As part of that transaction, Pitts signed an arbitration agreement which contained the following language: "You and we agree that if any Dispute arises, either you or we may choose to have the Dispute resoled by binding arbitration under the rules then in effect of the Arbitration Organization shown below (if no Arbitration Organization is shown below, the Arbitration Organization shall be the National Arbitration Forum)." At the bottom of the one-page arbitration agreement was a blank line, under which the following was typed: "Arbitration Organization (if none listed, the Arbitration Organization is the National Arbitration Forum.") No arbitration organization was identified on that line.

In 2015, Car Credit repossessed the automobile due to Pitts's failure to remain current with the terms of the financing agreement and initiated a breach of contract action in the trial court. Pitts counterclaimed, alleging Car Credit engaged in unlawful practices relating to vehicle repossession and collection of alleged deficiencies, and sought class certification. Car Credit voluntarily dismissed its claims against Pitts—leaving her counterclaim as the only pending claim in this action—and moved to compel arbitration. Pitts opposed the motion, asserting, *inter alia*, that the National Arbitration Forum ("NAF") had ceased arbitrating consumer claims and thus the sole agreed-upon arbitration organization was unavailable. The trial court granted Car Credit's motion to compel and ordered Pitts to file her claim in arbitration before the American Arbitration Association ("AAA").

The parties proceeded to arbitration. The AAA arbitrator entered an order concluding he had authority to arbitrate Pitts's claims, specifically finding that AAA could be substituted for NAF as the arbitration organization. One year later, the AAA arbitrator entered an award on the merits of Pitts's claims, finding in favor of Car Credit. Pitts filed in the trial court a motion to vacate the arbitration award, and Car Credit filed a motion to confirm the award. The trial court entered judgment confirming the arbitration award and finding in favor of Car Credit on all claims. Pitts appeals.

**REVERSED AND REMANDED.**

**Division Three holds:**

The trial court erred in entering judgment confirming the arbitration award. The parties agreed to arbitrate before—but only before—NAF, thus the AAA arbitrator lacked power to hear and resolve their disputes. *See A-1 Premium Acceptance v. Hunter*, 557 S.W.3d 923 (Mo. banc 2018). Section 10(a)(4) of the Federal Arbitration Act—which governs the parties' arbitration agreement—provides for vacatur of an arbitration award where, as here, the arbitrator exceeds his power in entering the award.

**Opinion by: Edward R. Ardini, Jr., Judge** Date: August 24, 2021

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