

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-2943

Hussein Abdi Malin,

Appellant,

v.

Starmark, a Masco Company,

Appellee.

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Appeal from the United States
District Court for the
District of South Dakota.

[UNPUBLISHED]

Submitted: December 3, 2001
Filed: December 13, 2001

Before HANSEN, FAGG, and BEAM, Circuit Judges.

PER CURIAM.

Hussein Abdi Malin brought an employment-discrimination and hostile-work-environment suit against StarMark. The district court¹ dismissed the suit with prejudice after both parties filed a stipulation for dismissal so that Malin could pursue his claims according to StarMark's dispute resolution policy, which required mediation and arbitration of all claims arising out of employment. Malin then moved pro se to reopen the case, asserting he never knowingly agreed to the dismissal stipulation. StarMark opposed the motion, and presented the affidavit of Malin's

¹The Honorable Lawrence L. Piersol, Chief Judge, United States District Court for the District of South Dakota.

former attorney; he attested that he had fully discussed the stipulation with Malin, who had given his informed and unequivocal consent to it. Malin presented no sworn statement or other evidence contradicting his former attorney's affidavit. The district court denied the motion, and Malin appeals.

We find the district court did not abuse its discretion in denying the motion, because it was not clear error to credit the attorney's affidavit. See Richards v. Aramark Servs., Inc., 108 F.3d 925, 927 (8th Cir. 1997) (Fed. R. Civ. P. 60(b) standard of review). Accordingly, we affirm the judgment of the district court. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.