

Timeframe for Appealing on Arbitral Award under the FAA

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Any attorney frequently involved in arbitration proceedings is intimately familiar with the scenarios that can allow a court to vacate, modify, or correct a final arbitration award. Perhaps, less known, yet arguably more important, is the time frame within which a party must serve notice of appeal in order to be granted judicial review. In the event a party runs afoul of these time limitations, the petitioning party will not be granted judicial review of the merits of its appeal. Being cognizant of the precise time period available to a party to file an appeal is therefore essential to protecting your clients' rights and defenses.

By adopting the Federal Arbitration Act (FAA) the United States memorialized a “national policy favoring [arbitration].”¹ Therefore, so as to protect the arbitral procedure, “arbitration awards are subject to very limited review in order to avoid undermining the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation.”² The Supreme Court in *Hall Street* made it clear there are only extremely limited grounds that may justify vacatur of an arbitration award. As a result, courts afford arbitration panels' decisions extreme deference and are reluctant to second guess the decisions of a duly appointed arbitration panel. The language, itself, of the FAA reflects the desire to protect arbitration awards, as it states “any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court *must* grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.”³ Accordingly, the exclusive⁴ grounds that will justify vacatur are (1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.⁵

¹ *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581 (U.S. 2008).

² *Global Reinsurance Corp. U.S. Branch v. Argonaut Ins. Co.*, 2009 U.S. Dist. LEXIS 47860 at *3 (S.D.N.Y. May 21, 2009).

³ 9 U.S.C. § 9 (emphasis added).

⁴ It should be noted that the Second Circuit also recognized “manifest disregard” of the law as a judicial gloss on the enumerated grounds in §10 of the FAA. In *Stolt-Nielsen SA v. Animalfeeds International Corp.*, 548 F.3d 85 (2d Cir. 2008), the Second Circuit agreed with those courts that thought “. . . manifest disregard, reconceptualized as a judicial gloss on those specific grounds for vacatur enumerated in §10 of the FAA, remains a valid ground for vacating arbitration awards.” *Id.* at 94 (internal quotation omitted). In other words the terms “manifest disregard,” “. . . referred to the §10 grounds collectively, rather than adding to them’ – or as ‘shorthand for §10(a)(3) or §10(a)(4).” *Id.* at 95 (quoting *Hall Street*, 552 U.S. at 585 (U.S. 2008)).

⁵ 9 U.S.C. § 10.

Confirmation proceedings are therefore summary proceedings that simply convert a final arbitration award into an enforceable court judgment.⁶

The above is well known by any attorney who frequently practices in the context of arbitration and has been the topic of articles ad nauseum in legal publications. What is often overlooked in these articles is that parties hoping to overturn a final arbitration award have, not only limited grounds to bring their appeal, but a limited time within which to raise these grounds.

The FAA requires notice of a motion to vacate, modify, or correct an arbitration award to “be served upon the adverse party or his attorney within three months after the award is filed or delivered.”⁷ A party to an arbitration award that fails to serve notice of a motion to vacate within the three month time period “forfeits the right to judicial review of the award.”⁸ Indeed, courts will not even address the merits of the appeal if service of the motion on the opposing party falls outside the statute of limitations.⁹ A court remains steadfast in its refusal to entertain a motion to vacate, modify, or correct an arbitration award brought beyond the three month period, even when raised as a defense to a motion to confirm.¹⁰ The language may seem clear on its surface; however, it deserves a closer look.

Special attention must be afforded to the precise language of Section 12 regarding the moment that stops the three month statute of limitations. As the FAA states that notice of a motion must “be served upon the adverse party or his attorney.”¹¹ The operative moment, therefore, for purposes of tolling the statute of limitations is the moment at which the motion is “served” upon the opposing party, not the moment when the motion is filed with the appropriate court.¹²

Although careful reading of the text will prove the FAA explicitly states when the statute for limitations is tolled, reasonable minds can differ regarding the exact length of time Section 12 permits for serving notice of a motion to vacate, correct, or modify. “Three months” could mean ninety days. “Three months” could just as easily mean three calendar months. This debate can be expounded and reveal several other possibilities, especially when the months involved are

⁶ *KX Reinsurance Co. v. General Reinsurance Corp.*, 2008 U.S. Dist. LEXIS 92717 at *9 (S.D.N.Y. Nov. 14, 2008)

⁷ 9 U.S.C. § 12.

⁸ *Silicon Power Corp. v. GE Zenith Controls, Inc.*, 2009 U.S. Dist. LEXIS 57814 (E.D. Pa. July 7, 2009) (quoting *Piccolo v. Dain, Kalman & Guail, Inc.*, 641 F.2d 598, 600 (8th Cir. 1981)); see also *Pfannenstiel v. Merrill Lynch, Pierce, Fenner & Smith*, 477 F.3d 1155, 1158 (10th Cir. 2007) (“A party to an arbitration award who fails to comply with the statutory precondition of timely service of notice forfeits the right to judicial review of the award” (quoting *Int’l Bhd. Of Elec. Workers, Local Union No. 969 v. Babcock & Wilcox*, 826 F.2d 962, 966 (10th Cir. 1987))).

⁹ *Oberwager v. McKechnie Ltd.*, Civ. A. No. 06-2685, 2007 U.S. Dist. LEXIS 90869, 2007 WL 4322982, at *5 (E.D. Pa. Dec. 10, 2007) (“A court may reach the merits of a motion to vacate an arbitration award only when notice of the motion is ‘served upon the adverse party or his attorney within three months after the award is filed or delivered.’” (quoting 9 U.S.C. § 12 and citing *Piccolo*, 641 F.2d at 600)).

¹⁰ *Choice Hotels Int’l, Inc. v. Shiv Hospitality, LLC*, 491 F.3d 171, 177 (4th Cir. Md. 2007) (quoting *Taylor v. Nelson*, 788 F.2d 220, 225 (4th Cir. 1986); see also *Florasynth, Inc. v. Pickholz*, 750 F.2d 171 (2d Cir. N.Y. 1984).

¹¹ 9 U.S.C. § 12.

¹² *Webster v. A.T. Kearney, Inc.*, 507 F.3d 568, 572 (7th Cir. 2000) (“service of a motion to vacate is the act that stops the three-month statute of limitations[,] not the filing of a motion to vacate”).

comprised of different lengths. Fortunately, recent decisions in the federal courts have offered some guidance. The courts have underscored that the three month limitation period may result in a limitations period with a variable number of days, depending on the months included in the time period. Three months, therefore is not to be read as ninety days.¹³ The three month time period will be interpreted as three calendar months. For example, if a final arbitration award was delivered on July 21, a petition to appeal the award must be served on the opposing party by October 21, regardless of the number of days in each month.¹⁴

In the event a party is considering appealing a final arbitration award, adherence to the three month time limit to serve notice of the appeal is essential. Filing outside this time limit, by just once day, will rob your client of judicial review of the contested arbitration award. Conversely, the prevailing party at arbitration may wish to make the tactical decision to delay filing a motion to confirm the award until the three month period has passed, so as to not encourage or obligate a challenge by the other party. As is true with most arbitrations, familiarity with the language of the FAA is essential to effective representation. Failure to understand particular nuances, like the time afforded to appeal an arbitration award, can have disastrous consequences.

¹³ *R&Q Reinsurance Co. v. Am. Motorist Ins. Co.*, 2010 U.S. Dist. LEXIS 109349 at *9 (N.D. Ill. Oct. 14, 2010); see also *Webster*, 507 F.3d at 574 (repeatedly referring to the “three month” statutory deadline, and denying as untimely a motion to vacate that was filed and served on April 5, 2006, “three months and one day” after the final arbitration award was delivered on January 4, 2006).

¹⁴ *Int’l Relief & Dev., Inc. v. Ladu*, 2012 U.S. App. LEXIS 12227 (4th Cir. Va. June 14, 2012) (the court stated Appellant had until October 21, 2011 to appeal the final arbitration award of July 21, 2011. This time period contains ninety-two days).