

Beware When the Dates to File Motions to Confirm and Vacate Arbitration Awards Conflict



Following the issuance of an arbitration award, a successful party generally starts to consider the filing of a motion to confirm, while the unsuccessful party reviews whether to file a motion to vacate.

Interestingly, however, the time limits within which such motions may be filed, differ under the Federal Arbitration Act (FAA). Motions to confirm must be filed within a year after the award is made, whereas motions to vacate, must be filed within three months. See 9 U.S.C. Sections 9 and 12. Accordingly, if the losing party fails to move to vacate timely, it cannot object to a later motion for confirmation based on any of the grounds in the FAA.

But may an award be confirmed before the three-month period to file the motion to vacate has run? In *McLaurin v. The Terminix International*, 13 F. 4th 1232 (11th Cir. 2021), a party, to its dismay, discovered that its failure to respond properly to an early motion to confirm resulted in its motion to vacate not only being denied, but not even being considered on its merits.

The case involved an arbitration proceeding in which homeowners alleged that Terminix had failed to provide required contractual inspections. The arbitrator awarded the homeowners \$2,767,900.

Two days after they received the award, the homeowners filed a complaint in district court to confirm. Two weeks later, Terminix filed an answer that included no arguments of substance, but merely stated that it intended to file a motion to vacate the award on or before Nov. 14, 2019 (the 19th day following the award.) Several days after Terminix filed its answer, the homeowners filed a motion to confirm and enter final judgment. This was followed by the district court ordering that “any opposition to the motion shall be filed no later than Sept. 25, 2019, and any reply to an opposition shall be filed no later than Oct. 2, 2019.” The court’s order made no reference to a separate deadline for a motion to vacate.

On Sept. 25, 2019, Terminix filed a four-page brief that responded to the homeowners’ confirmation motion by merely stating that the motion was “premature” and ‘procedurally improper’ because it was filed within three months of the arbitration award.” Terminix’s brief, however, did not identify any substantive reason for the district court not to confirm the arbitration, seek an extension to oppose the motion, or 3) request that the court delay its ruling.

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