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Equitable Tolling of the FAA's Deadline for Vacating an Arbitration Award



The Federal Arbitration Act (FAA), 9 U.S.C. Section 10(a) authorizes a district court “upon the application of any party to the arbitration” to vacate an arbitration award under a limited set of circumstances, including “where the award was procured by corruption, fraud or undue means.” Section 12 requires that “notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered.” Courts have generally been quite strict in holding that such notices be filed within the three-month period.

Are there circumstances, however, where the three-month period should be equitably tolled? This issue was recently considered by the U.S. Court of Appeals for the Eleventh Circuit in *Nuvasive v. Absolute Medical*, No. 22-10214, 2023 U.S. App. Lexis 15607 (11th Cir. June 21, 2023).

The plaintiff, a manufacturer of medical products, had an exclusive distribution agreement with the defendants. The agreement included noncompetition agreements which the plaintiff claimed were breached by the defendants when it started a competing company. The plaintiff’s complaint included several claims, one of which was for breach of contract. The district court enforced the arbitration clause in the agreement relating to the breach of contract claim while staying the other claims. The arbitration panel found that the defendants had breached the agreement, but denied the plaintiff’s claim for lost profits.

Following the arbitration, litigation resumed relating to the plaintiff’s other claims. The defendants produced text messages during discovery reflecting that the principal of the defendants had been sending text messages to the defendants’ sales representative

concerning the subjects of his testimony, while he was testifying virtually before the arbitration panel. Upon receiving these text messages, the plaintiff **READ MORE..**

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