

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TERRI TEPPER, as executor of the)	
estate of LAWRENCE WEINER,)	
)	Case No. 1:25-cv-09985
Petitioner,)	
)	
v.)	Judge Franklin U. Valderrama
)	
OPPENHEIMER & CO., INC.,)	
)	
Respondent.)	

**OPPENHEIMER & CO. INC.'S RESPONSE TO
PETITIONERS' NOTICE OF PENDING ARDC PROCEEDING AND
SUPPLEMENTAL AUTHORITY IN SUPPORT OF EQUITABLE TOLLING**

Petitioners' Notice of Pending ARDC Proceedings and Supplemental Authority in Support of Equitable Tolling and the exhibits thereto make fatal admissions. According to Exhibit A, which is signed by Jordan Tepper Weiner, the law firm that filed this action served Oppenheimer & Co. Inc. "late." (ECF No. 32, Ex. A at 7 of 18.) "Mr. DeBlasio's malpractice . . . caused the service deadline to be missed". (*Id.* at 8 of 18.) Mr. Weiner critically represents that Mr. Weiner and Mr. DeBlasio were both aware of the service deadline and that Mr. DeBlasio "admitted" his "mistake" in failing to effectuate service. (*Id.* at 7 of 18, 10 of 18).

Further, the case at bar and *Holland v. Florida*, 560 U.S. 631 (2010) could hardly be more different. *Holland* concerned a death row inmate who belatedly filed a petition for habeas corpus after his attorney had stopped communicating with him such that the inmate did not learn the state supreme court had resolved his final post-conviction appeal until months after the one-year habeas filing deadline had passed. The Supreme Court held that the timeliness provision of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2244(d), was subject to equitable tolling. *Holland* does not address the Federal Arbitration Act ("FAA").

Petitioners Terri Tepper, as executor of the estate of Lawrence Weiner, (the "Executor") and Jordan Tepper Weiner ("Mr. Weiner") (collectively "Petitioners") are not incarcerated and have not established the extraordinary circumstances presented by the death row inmate in *Holland*. As evidenced by Exhibit A to Petitioner's filing, "Mr. Weiner sent Mr. DeBlasio six separate communications

warning about the critical importance of not missing **the service deadline.**” (ECF No. 32, Ex. A at page 7 of 18 and Ex. B at 16 of 18) (emphasis added). Petitioners were in regular contact with counsel of record, knew about the arbitration award, and were aware of the “service deadline.” They have nothing in common with the death row inmate in *Holland*.

Ultimately, Petitioners have not shown grounds to vacate the Award, the timeliness of their motion to vacate aside. *E.g.*, *Std. Sec. Life Ins. Co. of New York v. FCE Benefit Administrators, Inc.*, 967 F.3d 667, 671 (7th Cir. 2020).

I. PETITIONERS CANNOT SHOW EXTRAORDINARY CIRCUMSTANCES

Petitioners through the present action seek to vacate a FINRA arbitration award under the FAA, 9 U.S.C. § 10, 12. Even if a federal statute is subject to equitable tolling, which in the case of Section 12 of the FAA is not supported by Seventh Circuit authority, “a litigant is entitled to equitable tolling of a statute of limitations **only if the litigant establishes** two elements: “(1) that he has been pursuing his rights diligently, and (2) that **some extraordinary circumstance** stood in his way and prevented timely filing.” *Menominee Indian Tribe of Wisconsin v. United States*, 577 U.S. 250, 255 (2016) (quoting *Holland v. Florida*, 560 U.S. 631, 649 (2010) (emphasis added). “The extraordinary-circumstance prong is met ‘only where the circumstances that caused a litigant’s delay are both extraordinary *and* beyond the [his] control.’” *Ademiju v. United States*, 999 F.3d 474, 477 (7th Cir. 2021) (emphasis and bracket in original). Beyond failing to show anything extraordinary, Petitioners have not shown anything beyond their control, like the

pandemic era prison restrictions in *Watkins v. Mohan*, 144 F.4th 926, 943-44 (7th Cir. 2025).

Petitioners are “charged with the acts and omissions of [their] counsel, including [their] counsel’s mistakes.” *Conner v. Reagle*, 82 F.4th 542, 551 (7th Cir. 2023) (holding erroneous legal advice on timing of petition does not qualify as an external obstacle warranting equitable tolling). According to the Seventh Circuit, a lawyer’s failure to meet a deadline constitutes “garden variety” neglect that does not rise to the level of an extraordinary circumstance. *Dent v. Charles Schwab & Co.*, 121 F.4th 1352, 1354 (7th Cir. 2024). Moreover, the Seventh Circuit has held that a petitioner who receives an arbitration award but fails to seasonably make a post-arbitration filing within a statutorily mandated time cannot satisfy *Menominee Tribe’s* two-element test. *Conway Family Trust by Conway v. Commodity Future Trading Comm’n*, 858 F.3d 463, 464 (7th Cir. 2017) (“[T]he arbitral award, right or wrong, has nothing to do with equitable tolling.”).

II. 9 U.S.C. § 12 IS NOT SUBJECT TO EQUITABLE TOLLING

Every federal statute that sets a deadline is **not** subject to equitable tolling. *E.g.*, *California Public Employees’ Retirement Sys. v. ANZ Sec., Inc.*, 582 U.S. 497, 508 (2017) (statute of repose); *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10-11 (2014) (limitations period in treaty and implementing statute); *United States v. Brockamp*, 519 U.S. 347, 352 (1997) (agency service and filing); *McCann v. Hy-Vee, Inc.*, 663 F.3d 926, 930 (7th Cir. 2011) (statute of repose). Only non-jurisdictional statutes of limitations, *i.e.* deadlines for **filing** with a court or a quasi-judicial authority, where

Congress has not expressed an intent to the contrary are subject to equitable tolling. *Boechler, P.C. v. Comm's of Internal Revenue*, 596 U.S. 199, 208-09 (2022).

A. The Statutory Language Does Not Support Equitable Tolling

By its plain language, Section 12 sets a deadline by which “[n]otice of a motion . . . must be served” and the manner and method of service, *i.e.* via the U.S. Marshal or some other method. 9 U.S.C. § 12. It does not set a filing deadline and is, therefore, not a statute of limitations subject to equitable tolling. *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1306 (7th Cir. 1995) (distinguishing statute of limitations and dismissal for failure to effectuate service).

B. A “Slight Majority” of Courts Have Declined to Apply Equitable Tolling to Section 12

In the absence of Supreme Court guidance on Section 12, courts have split on whether Section 12 may ever be subject to equitable tolling, though all agree that the application only applies in extraordinary circumstances and equitable tolling, to the extent it is available, is a rare exception. *Compare Nuvasive, Inc. v. Absolute Med., LLC*, 71 F.4th 861, 872-75 (11th Cir. 2023) and *Bachman Sunny Hill Fruit Farms, Inc. v. Producers Agriculture Ins. Co.*, 57 F.4th 536, 544 n. 4 (6th Cir. 2023); *Choice Hotels Int’l, Inc. v. Shiv Hospitality, L.L.C.*, 491 F.3d 171, 177 n.6 (4th Cir. 2007); *Safran Elec. & Defense SAS*, 764 F. Supp. 3d 133, 143-44 (S.D.N.Y. 2025). According to another District Court in the Seventh Circuit, “[t]he slight majority of courts addressing this issue, including the Court of Appeals for the Second Circuit have found that equitable tolling does not apply.” *Fairmount Minerals, Ltd. v. Mineral Serv. Plus, LLC*, No. 14-cv-400-bbc, 2014 WL 6389588 at *3 (W.D. Wis.

Nov. 14, 2014) (“I am not persuaded that equitable tolling is a viable exception to the Federal Arbitration Act’s limitation period in this circuit.”) (collecting authorities).

While the Seventh Circuit has not squarely addressed whether equitable tolling applies to Section 12 of the FAA, the Seventh Circuit strictly construes Section 12 and has held that the filing of a motion to reconsider does not toll the three month period for service. *Olson v. Wexford Clearing Servs. Corp.*, 397 F.3d 488, 492 (7th Cir. 2005) (“This purpose would be severely undermined if the limitations period prescribed in the FAA § 12 were tolled every time a losing party filed the functional equivalent of a motion for reconsideration.”). Subjecting Section 12 to equitable tolling contravenes *Olson*. Cf. 2 Domke on Commercial Arbitration § 38:7 (Nov. 2025 update) (“It is questionable whether equitable tolling can be used as an exception to the time requirements for filing a motion to vacate, modify or correct under the Federal Arbitration Act.”).

CONCLUSION

Oppenheimer & Co., Inc. respectfully requests confirmation of the arbitration Award. Oppenheimer further requests costs and any other relief that the Court deems just and equitable.

Dated: February 6, 2026

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Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned certifies that on February 6, 2026, the foregoing document was electronically filed with the Clerk of the U.S. District Court, using the Court's CM/ECF system, which will send electronic notification of the filing to those parties who have appeared and are registered as CM/ECF participants in this matter. Parties may access this filing through the Court's CM/ECF system.

The undersigned further certifies that on February 6, 2026, he caused a copy of the foregoing document to be sent via U.S. Mail, postage paid, to the following pro se individuals:

Terri Tepper 261 Kimberly Road North Barrington, IL 60010	Jordan Tepper Weiner 261 Kimberly Road North Barrington, IL 60010
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/s/ Mark A. Bradford