IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

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

PETITIONERS' REPLY TO OPPENHEIMER & CO. INC.'S RESPONSE (ECF No. 34)

Petitioners respectfully submit this Reply to Oppenheimer's Response (ECF No. 34), which mischaracterizes Petitioners' filings, distorts the applicable law, and asks this Court to elevate form over substance in a case involving the systematic financial exploitation of a 80 - year-old man that was suffering from two terminal medical conditions and documented significant cognitive decline.

I. THE ARDC PROCEEDING DEMONSTRATES EXTRAORDINARY CIRCUMSTANCES

Oppenheimer asserts the ARDC complaint contains "fatal admissions." (ECF No. 34 at 1.) This turns reality on its head. The ARDC does not initiate formal proceedings for mere negligence. Its Inquiry Board—functioning analogously to a grand jury—must first determine that sufficient evidence of misconduct exists to warrant a formal complaint. The pending ARDC proceeding is thus powerful evidence that Mr. DeBlasio's conduct transcends ordinary negligence and constitutes "serious instances of attorney misconduct." *Holland v. Florida*, 560

U.S. 631, 651–52 (2010). Moreover, Oppenheimer ignores that Mr. Weiner sent Mr. DeBlasio six separate written warnings about the service deadline (ECF No. 32, Ex. A at 7 of 18; Ex. B at 16 of 18)—and was thwarted by an attorney whose conduct has triggered formal disciplinary proceedings.

II. ATTORNEY MISCONDUCT HERE IS NOT "GARDEN VARIETY" NEGLECT

Oppenheimer relies on the principle that a client is "charged with the acts and omissions of [their] counsel." (ECF No. 34 at 3.) But the Supreme Court has held that "serious instances of attorney misconduct" can constitute extraordinary circumstances. *Holland*, 560 U.S. at 651–52. In *Maples v. Thomas*, 565 U.S. 266, 281–83 (2012), the Court held that "under agency principles, a client cannot be charged with the acts or omissions of an attorney who has abandoned him," drawing a critical distinction between negligence attributable to the client and misconduct so severe as to sever the agency relationship. As Justice Alito's concurrence in *Holland* emphasized, the "essential difference" is "between a claim of attorney error, however egregious, and a claim that an attorney had essentially abandoned his client." 560 U.S. at 657–59 (Alito, J., concurring).

Mr. DeBlasio's conduct falls squarely on the "misconduct" side of this line. An attorney who receives six written warnings about a critical deadline and fails to act has committed professional misconduct the ARDC has deemed worthy of formal proceedings—categorically different from *Dent v. Charles Schwab & Co.*, 121 F.4th 1352, 1354 (7th Cir. 2024) (failure to complete online filing), and *Conner v. Reagle*, 82 F.4th 542, 551 (7th Cir. 2023) (erroneous legal advice).

Oppenheimer weaponizes Mr. Weiner's diligence against him, arguing his six warnings show he "was aware of the 'service deadline.'" (ECF No. 34 at 3.) But *Holland* requires "reasonable diligence"—not maximum feasible diligence. 560 U.S. at 653. A petitioner who "sent his attorney numerous letters seeking crucial information and requesting that the attorney take action" demonstrated diligence. *Id.* Mr. Weiner's six written warnings parallel—and exceed—the diligence found sufficient in *Holland*. As *Maples* held, "a client . . . cannot be faulted for failing to act on his own behalf when he lacks reason to believe his attorneys of record, in fact, are not representing him." 565 U.S. at 283.

III. SECTION 12 IS SUBJECT TO EQUITABLE TOLLING

"[N]onjurisdictional limitations periods are presumptively subject to equitable tolling." *Boechler, P.C. v. Comm'r of Internal Revenue*, 596 U.S. 199, 208–09 (2022). No court has held Section 12's three-month period is jurisdictional. The Eleventh Circuit held Section 12 is subject to equitable tolling, *Nuvasive, Inc. v. Absolute Med., LLC*, 71 F.4th 861, 872–75 (11th Cir. 2023), as did the Ninth Circuit, *Move, Inc. v. Citigroup Global Mkts., Inc.*, 840 F.3d 1152, 1156–58 (9th Cir. 2016). No circuit court has held otherwise.

Oppenheimer's reliance on *Olson v. Wexford Clearing Servs. Corp.*, 397 F.3d 488 (7th Cir. 2005), is misplaced. *Olson* held only that a motion to reconsider does not toll the three-month period—a narrow holding about statutory tolling, not equitable tolling based on extraordinary circumstances. *Id.* at 492. *Olson* was decided seventeen years before *Boechler* established the modern framework. Oppenheimer's argument that Section 12 sets a "service" rather than "filing" deadline conflates form with substance; what matters is whether the deadline is nonjurisdictional, not how the required act is denominated. 596 U.S. at 208–09.

IV. OPPENHEIMER HAS NOT ADDRESSED A SINGLE GROUND FOR VACATUR

Throughout this litigation, Oppenheimer has devoted its entire briefing to procedural timeliness while avoiding the substance of the award Petitioners seek to vacate. This silence is telling. Petitioners have raised multiple independent grounds for vacatur, each supported by documentary evidence, and Oppenheimer has challenged none on the merits:

Fraud in Procurement (9 U.S.C. § 10(a)(1)). Oppenheimer's attorney McGuire told the arbitrator the unauthorized fee increase occurred in "mid-2022." Oppenheimer's own internal records—the Patrick Wade email of April 18, 2024—prove the increase was retroactively implemented on January 1, 2021, eighteen months earlier. The arbitrator relied on this false timeline. Oppenheimer has offered no explanation.

Retroactive Fee Increase on a Cognitively Impaired Senior. Oppenheimer increased Lawrence Weiner's fees by 56%—from 1.25% to 1.95%—effective January 1, 2021, eleven days before obtaining any purported authorization on January 12, 2021. Mr. Weiner was 80 years old with Parkinson's disease, Stage 4 cancer, and documented significant cognitive decline.

Arbitrator Misconduct (9 U.S.C. § 10(a)(3)). The arbitrator dismissed expert medical testimony from Dr. Ami Desai and Parkinson's therapist Nicholas Gorsline—who documented over 400 therapy sessions—establishing "significant cognitive decline at the time of the rate increase." When Petitioners asked whether opposing counsel was "permitted to lie," the arbitrator responded "Yes, he can," then failed to address documented misrepresentations in the award.

Discovery Violations. Oppenheimer deliberately substituted useless log files for requested financial spreadsheets, and strategically concealed evidence within voluminous production—all unsanctioned by the arbitrator.

Manifest Disregard for Elder Protection Laws. The award was rendered in manifest disregard of FINRA Rules 2165 and 3110, Illinois elder financial exploitation statutes, and fiduciary duties owed to a vulnerable senior. Oppenheimer's own complaint department dismissed Petitioners' formal complaint by citing "portfolio growth"—a categorically irrelevant standard—while ignoring expert testimony proving cognitive decline.

A respondent confident in its award would address the substance. Instead, Oppenheimer argues the courthouse door should be shut before this Court can examine what happened behind it.

V. THE EQUITIES OVERWHELMINGLY FAVOR PETITIONERS

Denying equitable tolling would mean Oppenheimer's alleged exploitation of a vulnerable elderly client escapes judicial review solely because of the independent misconduct of Petitioners' former attorney. Equitable tolling exists to prevent "rigid adherence to a deadline" from producing "fundamental unfairness." *See Holland*, 560 U.S. at 649–50. No result could be more unfair than allowing an entity accused of exploiting a 91-year-old man to escape review because the victim's attorney committed malpractice now the subject of formal disciplinary proceedings.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court (1) find that equitable tolling applies under 9 U.S.C. § 12; (2) find that Petitioners have satisfied both prongs

of the equitable tolling test; (3) deny Oppenheimer's request for confirmation; and (4) vacate the arbitration award and grant such further relief as the Court deems just and equitable.

Dated: February __, 2026

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned certifies that on February __, 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 to all registered participants. A true and correct copy was served via U.S. Mail and/or CM/ECF upon:

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