UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Kennie Arriola,

Plaintiff,

v.

Ernesto Martinez, Jr., and Law Offices of Ernesto Martinez, Jr., PLLC,

Defendants.

Civil No. 5:15-cv-1097-OLG

ORDER

Before the Court are Defendants' Response to Plaintiff's Motion to Confirm Arbitration Award and Motion to Reconsider and Vacate Award (docket no. 25); Plaintiff's Verified Petition to Partially Confirm and Vacate Final Award of Arbitrator (docket no. 26); Plaintiff's Proposed Final Judgment (docket no. 31); and Defendants' Motion to Disqualify Opposing Counsel (docket no. 32). Having considered these filings and the parties' responses, the Court concludes that, for the reasons set forth below, Defendants' motions to vacate the arbitration award and disqualify counsel for Plaintiff (docket nos. 25, 32) should be DENIED; Plaintiff's motion seeking the partial confirmation and partial vacatur of the final arbitration award (docket no. 26) should be GRANTED IN PART and DENIED IN PART; and a judgment should be entered in accordance with Plaintiff's proposed final judgment (docket no. 31).

On December 10, 2015, Plaintiff filed a petition to confirm arbitral award, seeking the Court's confirmation of arbitrator Phylis Speedlin's First Amended Interim Award (Interim Award). On April 21, 2016, the Court ordered the parties to advise the Court whether the Interim Award was sufficiently final and definite to be capable of confirmation. Docket no. 19. Plaintiff

submitted a Response to this Order, docket no. 24, but Defendants did not. On May 20, 2016, the Court entered an order in which it found that: (1) the Interim Award was final and definite as to all matters that had been submitted to the arbitration such that it was capable of confirmation because the only issue left unresolved by the Interim Award was the arbitral claimants' request for attorneys fees, which the arbitrator bifurcated for later consideration; (2) no party had presented grounds to vacate, modify, or correct the Interim Award; and (3) the time to raise such grounds had lapsed. Docket no. 23. The Court therefore granted Plaintiff's petition seeking confirmation of the Interim Award, and ordered the parties to submit proposed judgments by June 3, 2016. Docket no. 23.

Rather that submitting a proposed judgment, Defendants filed their "Motion to Reconsider and Vacate Award." Docket no. 25. Defendants also filed a "Motion to Disqualify Opposing Counsel for Plaintiff," in which they claim that counsel for Plaintiff was "disqualified" from representing the arbitral claimants in the FDIC Litigation,[1] docket no. 32 at ¶ 7, argue that this alleged disqualification "raises the question 'did the arbitration award arise from corruption or some other means?'" *id.* at ¶ 19, and request that the Court "disqualify opposing counsel from further participation in this case." *Id.* at ¶ 20. Plaintiff filed its Proposed Final Judgment on June 3, 2016. Docket no. 31. Plaintiff also filed a petition seeking confirmation of the arbitrator's First Amended Final Award (Final Award), which resolved the bifurcated attorneys fees question, found Defendants in contempt of the Interim Order, and imposed a civil coercive fine of $100 per day. Docket no. 26. The Court addresses each filing in turn.

[1] *See Halprin et al. v. FDIC, et al.*, 5:13-cv-01042-RP (the FDIC Litigation).

A. Defendants' Response to Plaintiff's Motion to Confirm Arbitration Award and Motion to Reconsider and Vacate Award (docket no. 25)

The Court first considers Defendants' "Response to Plaintiff's Motion to Confirm Arbitration Award and Motion to Reconsider and Vacate Award." Docket no. 25. In that filing, Defendants argue that the arbitral award should not be confirmed because it was procured by corruption, fraud, or undue means. Docket no. 25 at ¶ 6. Defendants also appear to argue that the arbitration award should be modified because Defendants now contend that some of the forfeited fees related to representation that was distinct from the FDIC Litigation in which the arbitral claimants disputed Defendants' billing practices. Docket no. 25 at ¶ 7. Finally, Defendants argue that the arbitration award should be vacated because "the arbitrator was guilty of misconduct or misbehavior" that Defendants claim prejudiced them. Docket no. 25 at ¶ 8.

Although this filing refers to the date of entry of the arbitrator's Final Award, docket no. 25 at ¶ 3, it disputes findings that were reached in the Interim Award, and was filed before Plaintiff had moved to confirm the Final Award. Thus, it appears to be responsive to plaintiff's petition to confirm the Interim Award and as such, it is untimely. *See* 9 U.S.C. § 12 (notice of a motion to vacate, modify, or correct an award must be served within three months after the award is final or delivered); *see also Brown v. Witco Corp.*, 340 F.3d 209, 218 n.8 (5th Cir. 2003). Furthermore, it was only submitted to this Court after the Court granted Plaintiff's petition seeking confirmation of the Interim Award. Docket no. 20. To the extent that it seeks reconsideration of that Order, it fails because it does not raise any argument that was unavailable to Defendants before the issuance of the Order of which Defendants now seek reconsideration.[2]

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[2] *Hamilton Plaintiffs v. Williams Plaintiffs*, 147 F.3d 367, 371 n.10 (5th Cir. 1998) (the Federal Rules do not provide for a "Motion for Reconsideration" but such a motion "may properly be considered either a Rule 59(e) motion to alter or amend judgment or a Rule 60(b) motion for relief from judgment"; a Rule 59(b) motion must be filed within ten days of the

These reasons alone provide a sufficient basis for the Court's conclusion that Defendants' motion should be denied. However, even treating this motion as responsive to the Final Award, or disregarding its untimeliness, it fails to present a basis for vacating, modifying, or correcting either of the arbitral awards.

Defendants' first argument, that the arbitral awards were procured by corruption, fraud, or undue means, fails because Defendants do not allege any corruption, fraud, or other impropriety that touches on the arbitral proceedings. Rather, Defendants repeat the allegations they raised in their separate lawsuit against Plaintiff and his counsel, that they acted improperly in recruiting his former clients to join the fee dispute against Defendants. *See The Law Offices of Ernesto Martinez, Jr., PLLC v. Hellmich Law Group, PC, et al.*, 5:14-cv-769-OLG. Defendants quote at length from a magistrate judge's recommendation in that case that their claims not be dismissed upon Hellmich's claim of litigation privilege. *See* docket no. 25 at ¶ 5; 5:14-cv-769 docket no. 25 at 20-21. As Defendants are aware, however, that recommendation made no finding about the merit, or lack thereof, of Defendants' tort claims against Plaintiff's counsel. More significantly, the claims in that case—tortious contract interference, conspiracy to interfere in a business relationship, business disparagement, and defamation—have no bearing on the questions decided by the arbitrator in this case: whether Defendants committed breaches of their fiduciary duties and violations of the Texas Disciplinary Rules of Professional Conduct. The integrity of the arbitration process and the arbitral award are not affected by Defendants' claim

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judgment or order complained of); *Ross v. Marshall*, 426 F.3d 745, 763 (5th Cir. 2005) (a Rule 59(b) motion "cannot be used to raise arguments which could, and should, have been made before the judgment issued"); *In re Pettle*, 410 F.3d 189, 192-93 (5th Cir. 2005) ("Where a party makes a considered choice he cannot be relieved of such a choice under Rule 60(b) because hindsight seems to indicate to him that, as it turns out his decision was probably wrong.") (internal alterations and quotation marks omitted).

that, in the process of bringing their misconduct to light, Plaintiff and his counsel also committed torts against them.

Defendants' second argument, that the award should be modified or corrected because it awarded a forfeiture of fees that arose from representation provided in cases other than the FDIC Litigation, also fails to state a basis for modifying or correcting the arbitral award. Although Defendants attempt to frame their dispute of the arbitrator's findings as an "error" in the arbitration award, in reality they merely dispute a finding of fact that was reached by the arbitrator. In order to constitute a ground for setting aside an arbitration award, a material mistake of fact must be, *inter alia*, "unambiguous and undisputed." *Haag v. Infrasource Servs., Inc.*, 514 F. App'x 430, 431 (5th Cir. 2013) (quoting *Valentine Sugars, Inc. v. Donau Corp.*, 981 F.2d 210, 214 (5th Cir. 1993)). Although Defendants now contend that the $26,500 paid to them by Plaintiff and awarded to Plaintiff by the arbitrator was for representation other than the FDIC Litigation, Plaintiff disputes this claim. *Compare* docket no. 25 at ¶ 7; *with* docket no. 26-2 at ¶ 6 ("my business partners and I paid Respondents no less than $26,500 to represent our interests in the FDIC Litigation."). Defendants' cursory arguments that the arbitrator's computation of the fees Defendants were ordered to forfeit was unsupported by evidence, and that therefore the fee forfeiture award was "based on matters not submitted to the arbitration[,]" docket no. 25 at ¶ 7, is without merit for the same reason. This argument does not raise any unambiguous or undisputed material mistake in the arbitrator's computation of the fee forfeiture, but rather seeks—without support from any impeaching evidence—to dispute the testimony and affidavits of the arbitral claimants regarding the fees that they paid Defendants, the reconstruction of Defendants' billings by claimants' expert (which accounted for the amount Defendants contend claimants did not

pay), and the arbitrator's detailed factual findings based upon claimants' evidence. *See, e.g.*, docket no. 26-1 at 3, 12-13, 16.

Defendants' final argument, that the arbitrator was guilty of misconduct or misbehavior that prejudiced his rights because she denied his requests in March and July 2015 to delay the arbitration, docket no. 25 at ¶ 8, is similarly without merit. Defendants claim that the arbitrator's unwillingness to delay the arbitration caused his initial counsel to withdraw from the case in March 2015, and denied his replacement counsel an opportunity to familiarize himself with the case after he was retained in June 2015. Docket no. 25 at ¶ 8. What Defendants fail to mention, however, is that the initial arbitration date of July 20-22, 2015, was set in order to accommodate the schedule of his initial counsel, and when that counsel withdrew from the case on March 18, 2015, he made no mention of a need to delay the arbitration. Docket nos. 33 at 4; 33-3 at ¶ 8; 33-4 at 2. Although the record does not reveal when or why the arbitration date was changed, it is nonetheless clear that the four-day arbitration hearing did not ultimately begin until August 26, 2015, nearly two months after Defendants retained the counsel who represented them in that proceeding. Docket nos. 26-1 at 9; 33 at 4. Defendants also complain that the arbitrator denied a July 2015 request for supplemental discovery, but fail to mention that they were provided with a six-week window to propound discovery upon the arbitral claimants, and fail to identify what material they hoped to uncover through supplemental discovery aside from a vague reference to "invoices, payments, correspondence, breakdown and accounting of many issues being arbitrated"—materials which presumably would have been in Defendants' possession to begin with. Docket nos. 25 at ¶ 8; 33-3 at ¶ 4.

For these reasons, the Court finds that Defendants' motion seeking reconsideration and to vacate the arbitration award lacks merit and should be DENIED.

B. Defendants' Motion to Disqualify Opposing Counsel (docket no. 32)

Defendants' motion seeking the disqualification of Plaintiff's counsel is based on events that transpired several months ago in the FDIC Litigation, which involves many of the same parties and attorneys as this case. On December 18, 2015, counsels for several of the plaintiffs in that case alerted the Court that they had discovered a "potential conflict of interest" that required them to seek withdrawal from their representation. *Halprin et al. v. FDIC, et al.*, 5:13-cv-1042-RP, docket no. 141 at ¶ 1. One of those counsels, Carlos Uresti, also serves as *pro hac vice* local counsel in this case alongside Plaintiff's lead counsel, Christopher Hellmich.[3] The FDIC Litigation plaintiffs who opposed the December 2015 motion to withdraw sought the court's permission for Hellmich to make a limited appearance for the purpose of opposing the withdrawal request. *Halprin*, 5:13-cv-1042-RP, docket no. 152. The record in the FDIC Litigation does not reveal the nature of the potential conflict of interest. On January 13, 2016, the court held a hearing during which it reviewed evidence presented to the court *in camera*, and the next day the court granted the motion. *Halprin*, 5:13-cv-1042-RP, docket no. 159. The record does not indicate that Hellmich had any involvement in the FDIC Litigation other than making a single appearance to represent the group of plaintiffs who opposed their counsels' December 2015 motion to withdraw. The record also does not indicate that Hellmich ever sought withdrawal, claimed any conflict of interest, or was disqualified from further representation in that case. Defendants now seek to have both Hellmich and Uresti disqualified in this case because "there is a genuine threat that the party's former confidences will be divulged to the opposing party" and because Uresti's potential conflict of interest in the FDIC Litigation "raises

[3] Although Hellmich argues that Uresti "has not had any role in drafting or filing any of the papers in this matter[,]" docket no. 34 at 3, the record seems to indicate that at least one recent filing in this case was signed as submitted by Uresti. *See* Docket no. 26 at 11.

the questions of continued representation by Uresti and Hellmich as to one of the Plaintiff[s] who they were disqualified from and not the remaining." Docket no. 32 at ¶¶ 5, 6.

A former client who seeks to disqualify an attorney based on a possible conflict of interest "need only to show that the matters embraced within the pending suit are substantially related to the matters or cause of action wherein the attorney previously represented him." *In re Yarn Processing Patent Validity Litig.*, 530 F.2d 83, 89 (5th Cir. 1976). This is because courts will presume that confidences that are potentially damaging to the former client have been disclosed to the attorney. *Id.* However, in the absence of an objection by a former client to a potentially adverse representation, "[t]hese considerations do not apply[.]" *Id.*; *Coates v. Brazoria Cty. Tex.*, No. CIV.A. G-10-71, 2012 WL 2568129, at *2 (S.D. Tex. June 29, 2012) (discussing *In re Yarn*). Subject only to narrow exceptions, "courts do not disqualify an attorney on the grounds of conflict of interest unless the former client moves for disqualification." *In re Yarn*, 530 F.2d at 88; *Coates*, 2012 WL 2568129, at *2. This is because of the risk that "allow[ing] an unauthorized surrogate to champion the rights of the former client would allow that surrogate to use the conflict rules for his own purposes where a genuine conflict might not really exist." *In re Yarn*, 530 F.2d at 90. That appears to be precisely the situation in this case. The record reflects that Defendants were well aware of Uresti's possible conflict of interest as it came to light several months ago; indeed, Defendants sought a stay of the arbitration proceedings on the basis of Uresti's withdrawal from the FDIC Litigation in January 2016. Docket no. 33-1 at ¶¶ 12-17. Although Defendants have, for more than six months, professed the need for a motion to seek inspection of the *in camera* evidence regarding the conflict of interest, they have filed no such motion, even though they remain counsel of record for three of the FDIC Litigation

plaintiffs. *Halprin*, 5:13-cv-1042, docket no. 170.[4] Defendants now profess concern for the interests of Uresti's former clients given the unlikely possibility that Defendants themselves might benefit from the disclosure of those clients' confidences by Plaintiff's *pro hac vice* local counsel. However, the circumstances surrounding this motion suggest that Defendants' true goals are to delay and derail these proceedings.

Defendant lacks standing to object to Plaintiff's counsels' participation in this case. Defendants raise only a vague suggestion that some unspecified impropriety might have resulted from this unknown potential conflict of interest, about which Defendants have apparently made no effort to learn more despite complaining about it for more than six months. This vague suggestion of impropriety resulting from a possible unknown conflict of interest is insufficient to establish the narrow circumstances where "ethical conflict is so manifest and glaring that it necessitates third-party standing." *Coates*, 2012 WL 2568129, at *2 (quoting *In re Yarn*, 530 F.2d at 89). Thus, in the absence of any objection from Uresti's former clients, the Court does not find any basis for disqualifying Uresti or Hellmich from participation in this case, and the Court concludes that Defendants' motion to disqualify Plaintiff's counsel should be DENIED.

C. Plaintiff's Verified Petition to Partially Confirm and Vacate Final Award of Arbitrator (docket no. 26) and Proposed Final Judgment (docket no. 31)

The arbitrator's Interim Award resolved all liability issues between the parties, leaving to the Final Award only "a wholly separate question" of whether Defendants were required to pay the arbitral claimants' attorneys fees and costs. Docket no. 24 at 3. The Interim Award contained findings that Defendants committed several breaches of fiduciary duty and violations of Rules

[4] One day after filing the motion by which they argued the possible conflict of interest affecting Plaintiff's *pro hac vice* local counsel called into question the integrity of the arbitration award, Defendants themselves moved to withdraw from their representation of plaintiffs in the FDIC Litigation, citing their own conflict of interest. Docket no. 32; *Halprin*, 5:13-cv-1042, docket no. 170 at ¶ 1.

1.02(a), 1.04, 1.14(b), 5.03, and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct. Docket no. 26-1 at 22-24. The Interim Award also contained findings that the arbitral claimants terminated Defendants for "good cause" within the meaning of their retainer agreements, thus relieving them of the contingency fee provisions in those retainers, and that Defendants' breaches of fiduciary duty were sufficiently "clear and serious" to warrant equitable fee forfeiture. Docket no. 26-1 at 24-25. Based on those findings, the Interim Award ordered that Defendants are jointly and severally liable for forfeiture of $650,620.77, representing the total fees paid in the FDIC Litigation; that Defendants forfeit any and all fees invoiced but deferred or unpaid in the FDIC Litigation; that Defendants forfeit any and all claims to any contingency fee award due from the FDIC Litigation; that claimants are awarded interest at the rate of five percent per annum, computed as simple interest, on the amount of $650,620.77 from May 24, 2015, until paid; and that Defendants are jointly and severally liable for the arbitrator's compensation, administrative fees, and expenses in the amount of $25,998. Docket no. 26-1 at 25-26. The Interim Award also awarded injunctive relief related to the disposition of $88,000 that the arbitral claimants had paid to Defendants to fund preparation for a mediation in the FDIC Litigation that had been scheduled for March 31, 2014, but never occurred, ordering that Defendants produce to Plaintiff's attorney "all documents, including all bank statements, checks, and deposit slips reflecting the deposit and disposition of the $88,000" no later than December 11, 2015. Docket no. 26-1 at 25. Finally, the Interim Award instructed the parties to submit documentation of their attorneys fees and any objections by January 5, 2016. Docket no. 26-1 at 26.

In the Final Award, the arbitrator addressed two issues: attorneys fees, and Defendants' failure to abide by the injunctive order contained in the Interim Award related to producing

records of the disposition of the missing $88,000. In the Final Award, the arbitrator found Defendants in civil contempt for their failure to comply with the arbitrator's order, and imposed a civil coercive fine of $100 per day beginning on December 12, 2015, for each and every day that Defendants fail to bring themselves into compliance with the arbitrator's order to provide claimants' counsel "all documents, including bank statements, checks, and deposit slips reflecting the deposit and disposition of the $88,000 paid by claimants and specifically earmarked for the March 31, 2014 mediation." Docket no. 26-1 at 4. The Final Award next addressed the two independent claims for attorneys fees that claimants had asserted: (1) attorneys fees of $325,953.45 and costs of $64,974.25 related to claimants' affirmative claims in arbitration; and (2) attorneys fees of $113,700 and costs of $29,647.82 related to defending against the federal lawsuit that Defendants filed against Plaintiff[5] in violation of the parties' arbitration agreement. With respect to the fees and costs claim arising from defending against the Defendants' improperly filed federal claims, the arbitrator found that the parties' arbitration agreement provided for reimbursement of attorneys fees and costs in the event of the filing of legal action in violation of the arbitration clause, and that claimants incurred $85,700 in reasonable and necessary attorneys fees and $29,647.82 in costs in seeking and obtaining the dismissal of Plaintiff from the federal court action Defendants filed against him. Docket no. 26-1 at 6. However, the arbitrator found that Plaintiff is not entitled to recover attorneys fees and costs related to his affirmative claims in arbitration. Docket no. 26-1 at 5. The arbitrator reasoned that, first, the parties' arbitration agreement provided for expenses of the arbitrator to be borne by the non-prevailing party, but "does not . . . provide for recovery of attorney fees and costs to the prevailing party in the arbitration." Docket no. 26-1 at 5. Next, the arbitrator considered

[5] *See The Law Offices of Ernesto Martinez, Jr., PLLC v. Hellmich Law Group, PC*, 5:14-cv-1097-OLG.

claimants' argument that they were entitled to recovery of these fees and costs under the Texas Civil Practice and Remedies Code, which provides that "[a] person may recover reasonable attorney's fees from an individual or corporation, in addition to the amount of a valid claim and costs, if the claim is for . . . an oral or written contract." Tex. Civ. Prac. & Rem. Code Ann. § 38.001 (West 2015). The arbitrator rejected this argument as well, reasoning that the claimants had "prevailed on their breach of fiduciary claim (a tort action) not a breach of contract claim" and that none of the other provisions for recovery of attorneys fees under Section 38.001 were applicable. Docket no. 26-1 at 5. Based on these findings, the Final Award ordered that Defendants pay claimants $85,700 in attorneys fees and $29,647.82 in costs, and denied all other claims. Docket no. 26-1 at 7. Plaintiff challenges the arbitrator's denial of its claim of arbitration-related attorneys fees and costs. Plaintiff argues that the parties to the arbitration raised a breach of contract claim that would have qualified claimants for statutory fee-shifting under Section 38.001, that the arbitrator exceeded her authority by failing to provide a reasoned decision on that claim as required by the parties' contracted-to arbitration rules, and that her award should therefore be partially vacated and remanded for a finding on the parties' contract claim. Docket no. 26 at 2; 9 U.S.C. § 10(a)(4) (District court may vacate arbitration award where the arbitrators imperfectly executed their powers such "that a mutual, final, and definite award upon the subject matter submitted was not made.").

As an initial matter, it is at least arguable that the arbitrator's findings of numerous clear and serious breaches of fiduciary duty and violations of the Texas Disciplinary Rules of Professional Conduct equated to findings of Defendants' breach of their retainer agreements with

the arbitral claimants.[6] However, as Plaintiff has pointed out, the Court may not assume a breach of contract that the arbitrator did not explicitly find or render its own finding of breach of contract based upon the arbitrator's factual findings.[7] The arbitrator was clear in her Final Award that she had made no finding of a breach of contract, and she rejected Plaintiff's claim for fees and costs that depended upon such a finding. Docket no. 26-1 at 5-6.

Plaintiff argues that, since claimants raised breach of contract as an issue in their demand for arbitration and throughout the arbitration process, *see, e.g.*, docket no. 26-3, the applicable arbitration rules obligated the arbitrator to "issue a reasoned award" as to that issue. Docket no. 26 at 3 (describing Rule 32 of the Conflict Solutions of Texas Rules for Arbitration). Thus, Plaintiff argues that the arbitrator exceeded her authority by failing to make a reasoned decision on his breach of contract claim in violation of the parties' contracted-to arbitration rules. *PoolRe Ins. Corp. v. Organizational Strategies, Inc.*, 783 F.3d 256, 262 (5th Cir. 2015) ("It is well-established that courts may set aside awards when the arbitrator exceeds his contractual mandate by acting contrary to express contractual provisions."). Although Plaintiff styles this argument as a request that the arbitrator's Final Award be partially vacated, it is clear that Plaintiff actually

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[6] *Burrow v. Arce*, 997 S.W.2d 229, 238 (Tex. 1999) (quoting approvingly from the Restatement (Third) of the Law Governing Lawyers that "The remedy of fee forfeiture presupposes that a lawyer's clear and serious violation of a duty to a client destroys or severely impairs the client-lawyer relationship and thereby the justification of the lawyer's claim to compensation."); *but cf. Riverwalk CY Hotel Partners, Ltd. v. Akin Gump Strauss Hauer & Feld, LLP*, 391 S.W.3d 229, 236 (Tex. App. 2012) (describing "rule against fracturing of legal malpractice claims" that requires that pleadings distinguish between claims of attorney negligence, sounding in tort, from other claims arising from attorney misconduct, such as breach of contract).

[7] *See, e.g.*, *Murchison Capital Partners, L.P. v. Nuance Commc'ns, Inc.*, 760 F.3d 418, 423 (5th Cir. 2014) ("[t]he arbitrator's award is not subject to judicial review on the merits"; thus "remand to the arbitrator is the appropriate disposition of an enforcement action when an award is patently ambiguous, [or] when the issues submitted were not fully resolved."); *see also Brown v. Witco Corp.*, 340 F.3d 209, 216 (5th Cir. 2003) ("A court may not interpret the award in order to resolve the ambiguity and implement the award; instead, the court must remand the award to the arbitrator with instructions to clarify the award's particular ambiguities.").

challenges the adequacy of the Interim Award. Plaintiff has previously made clear to the Court his understanding that all liability issues were resolved by the Interim Award, and that the sole issue that remained to be determined following the Interim Award was the question of attorneys fees that the parties had agreed to bifurcate for resolution at a later time. Indeed, this motion comes several months after Plaintiff sought confirmation of the Interim Award. Following that request, the Court inquired of the parties whether the Interim Award was sufficiently "final and definitive" to be capable of confirmation, and Plaintiff responded by reassuring the Court that the Interim Award had resolved all liability issues, that all that remained was "a wholly separate question" of attorneys' fees and costs, that "nothing in the Final Award disturbs any of the Interim Award's findings of fact, conclusions of law, or the resulting fee forfeiture award" and reasserting his request for blanket confirmation of the Interim Award. Docket nos. 19; 24 at 3. Plaintiff was not ignorant of the Final Award's findings regarding attorneys fees at the time of that filing—indeed, the Final Award was submitted as an exhibit with that filing, and Plaintiff noted his intent to "petition the court to partially confirm the Final Award." Docket nos. 24 at 1; 24-1. Mindful that "the rights and obligations of the parties . . . do not stand in need of further adjudication" following the Interim Award, this Court thereafter found that "grounds for vacating, modifying, or correcting the Interim Award are not present" and that the time to raise such grounds had lapsed. Docket no. 23 at 4 (quoting *McVay v. Halliburton Energy Servs., Inc.*, 608 F. App'x 222, 225 (5th Cir. 2015) (unpublished)). Therefore, the Court granted Plaintiff's petition seeking confirmation of the Interim Award. Docket no. 23. Now, mere weeks after reassuring the Court of the finality of the Interim Award as to all liability issues, Plaintiff seeks partial vacatur of the very liability findings of which he has already obtained the Court's confirmation.

Properly understood as a request to partially vacate the Interim Award, Plaintiff's request is untimely. *See* 9 U.S.C. § 12 (notice of a motion to vacate, modify, or correct an award must be served within three months after the award is final or delivered). Plaintiff's previous representations make clear that he viewed all liability issues as resolved as of the Interim Award. Thus, the Court finds that the three-month window to challenge the adequacy of a liability finding—or to challenge the lack of a finding as to a claim of liability—accrued as of the Interim Award.[8] The Interim Award was issued on December 1, 2015. Plaintiff's motion in this Court seeking to remand this matter to the arbitrator for additional findings was served and filed on June 2, 2016. Docket no. 26. Accordingly, Plaintiff's request that the arbitrator's findings be partially vacated and remanded so that the arbitrator can decide an additional question of liability is barred by the Federal Arbitration Act's "statute of limitations[.]" *Brown*, 340 F.3d at 218 n.8 ("the FAA's three month statute of limitations period governs the period of time within which a party must file a lawsuit in federal court asking the court to vacate, modify, or correct an arbitration award") (internal emphasis omitted).

With the sole exception of the breach of contract issue and the partial denial of his attorney fee request that flowed from it, Plaintiff seeks confirmation of the Final Award. The Final Award was issued on March 4, 2016. Docket no. 26-1 at 7. Defendants have not made any filing responsive to Plaintiff's motion seeking confirmation of the Final Award, and, as discussed above, none of the parties' arguments raise grounds for vacating, correcting, or modifying the Final Award as set forth at 9 U.S.C. §§ 10 and 11, and none are evident from the record. The

[8] Plaintiff has also noted that the arbitrator made clear to the parties that, as required by the arbitration rules, her resolution of their claims would be issued no later than thirty days after the parties submitted their post-hearing briefs, which the parties completed in mid-October 2015. Docket nos. 26 at 4 (summarizing Rule 31 of the Conflict Solutions of Texas Rules of Arbitration); 26-5; 26-6.

time to raise such grounds has lapsed. 9 U.S.C. § 12. Therefore, the Court finds that the Final Award should be confirmed.

Conclusion

It is therefore ORDERED that Defendants' Motion to Reconsider and Vacate Award (docket no. 25) is DENIED; Defendants' Motion to Disqualify Opposing Counsel (docket no. 32) is DENIED; and Plaintiff's Verified Petition to Partially Confirm and Vacate Final Award of Arbitrator (docket no. 26) is DENIED IN PART and GRANTED IN PART.

A separate Final Judgment will be entered concurrent with this Order. The Clerk of the Court may close this case upon entry of this Order and the concurrent Final Judgment.

IT IS SO ORDERED.

SIGNED this 15 day of June, 2016.

ORLANDO L. GARCIA
CHIEF UNITED STATES DISTRICT JUDGE