DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MELVIN CARTER, **Plaintiff,** **v.** **EXCEL CONSTRUCTION AND MAINTENANCE VI, INC.,** **Defendant.**	**1:21-cv-00241-WAL-EAH**

TO: Namosha Boykin, Esq.
Micol L. Morgan, Esq.

ORDER

THIS MATTER comes before the Court on the "Motion to Lift Stay and Proceed to Trial on All Issues Outside the Arbitration Agreement" (the "Motion to Lift Stay") filed on January 2, 2025 by Attorney Namosha Boykin on behalf of Plaintiff Melvin Carter, Dkt. No. 43, and the Motion for Sanctions, filed on January 30, 2025, by Attorney Micol Morgan on behalf of Excel Construction and Maintenance VI, Inc. ("Excel"), Dkt. No. 46. On February 12, 2025, the Court held a hearing on both motions. For the reasons that follow, the Court will deny the Motion to Lift Stay and grant the Motion for Sanctions.

BACKGROUND

On May 19, 2021, Mr. Carter filed a six-count Complaint against Excel, his former employer, alleging that Excel engaged in discriminatory hiring, promotion, and compensation practices, discriminatory treatment of non-white employees, religious discrimination, and wrongful, retaliatory termination. Dkt. No. 1. As relief, he requested

various damages and repayment of "the costs of this action, including reasonable attorney's fees and costs." *Id*.

Rather than file a responsive pleading, Excel moved to compel arbitration on all claims and stay the proceedings. Dkt. No. 8. On October 8, 2021, the Court entered an Order finding that Mr. Carter's employment agreement contained an enforceable provision that compelled arbitration on all of the claims in Mr. Carter's complaint. Dkt. No. 18. Accordingly, the Court granted Excel's motion. *Id*. Throughout the pendency of the arbitration, the Court received numerous Status Reports from the parties. The most recent status report was jointly filed by the parties on August 26, 2024. Dkt. No. 42. In it, they stated that the arbitrator awarded an Interim Award and that a Final Award would issue after the parties filed and served any "documentation evidencing or disputing the amount of damages and attorneys' fees sought in connection with the arbitration." *Id*.

That is the sum of the procedural history in this Court prior to Mr. Carter's Motion to Lift Stay. However, the Court will summarize—as relevant for the purposes of the present motions—the procedural history of the arbitration, based on exhibits Excel attached to its response to Mr. Carter's Motion to Lift Stay, which Plaintiff confirmed are documents from the arbitration.

I. Procedural History of Arbitration Based on Excel's Exhibits

As part of his employment with Excel, Mr. Carter signed a Dispute Resolution Agreement (hereinafter the "Arbitration Agreement" or "Agreement"). Dkt. No. 44-13 at 8-9. The Agreement contained a section entitled "Matters Arbitrable" which listed several claims

that, if alleged, were subject to arbitration. *Id*. The claims included "any claim for costs, fees, or other expenses or relief, including attorney's fees."

Attorney Boykin signed a "Demand for Arbitration," in December 2021, which she filed with the American Arbitration Association. The Demand stated that Mr. Carter was seeking attorney's fees and costs, among other damages. Dkt. No. 44-1.

An arbitration hearing took place throughout the latter months of 2023. Dkt. No. 44-2 at 1. On July 29, 2024, following the hearing and submission of post-hearing briefs, the Arbitrator issued a "Findings of Fact and Interim Award of Arbitrator." *Id*. The Arbitrator found in favor of Mr. Carter on one of his racial discrimination claims and his wrongful discharge claim, but denied all of his other claims. *Id*. at 25. The Arbitrator did not specify the amount of damages Mr. Carter would be awarded. Instead, she set a schedule for the parties to present evidence on and brief damages. *Id*. The Arbitrator provided Mr. Carter fourteen "days after receipt of this Interim Award to file and serve any documentation supporting or evidencing only the amount of damages and attorneys' fees he seeks to recover in connection with this arbitration." *Id*. The Arbitrator also found that the "costs of arbitration" were to be borne by Excel. *Id*.

On August 13, 2024, Attorney Boykin filed a motion seeking an extension of time through August 14, 2024 to file "evidence of [Mr. Carter's] damages and attorneys' fees," due to a power outage on August 12, 2024 that prevented her from timely filing the evidence. Dkt. No. 44-3. That motion was granted. Dkt. No. 44-4 at 1. However, according to Excel's September 3, 2024 motion to the Arbitrator to disallow an award of damages, Mr. Carter

failed to meet the August 14 deadline. *Id*. at 2. On August 20, 2024, the Arbitrator directed Mr. Carter to advise her of the status of his submission, but Mr. Carter did not respond. *Id*. Therefore, Excel moved to "disallow [Mr. Carter] an award of damages in this arbitration due to his abject failure to comply with the Arbitrator's Interim Award[.]" *Id*. at 2-3.

Attorney Boykin filed a response opposing Excel's motion to disallow damages on September 10, 2024. Dkt. No. 44-5. She argued that the case should be decided on the merits. Moreover, the grounds for her delay were excusable and non-prejudicial—namely that a power outage, followed by a tropical storm (which led to several more power outages), prevented her from timely filing the appropriate documents, and that she "also faced other periods of unavailability and reduced work hours" because she was hospitalized. *Id*. The motion requested that Excel be sanctioned for violating Rule 11 by failing to cite to law in its motion to disallow damages and requested an extension to file the evidence through September 13, 2024. *Id*.

The Arbitrator denied the request to disallow damages and the request for sanctions and provided Mr. Carter until October 15, 2024 to file any evidence related to damages. Dkt. No. 44-6. On October 16, 2024, Excel again moved to disallow damages because Mr. Carter "did not respond to the Arbitrator's Order, either by providing the required documentation . . . or requesting a further extension of the deadline." Dkt. No. 44-7. On November 1, 2024, Attorney Boykin filed a response in which she stated that she faced "unforeseen medical complications" which kept her off-island throughout much of October 2024. Dkt. No. 44-8. Accordingly, she requested an extension through November 5, 2024 to file an opposition to

the motion to disallow damages, and requested additional time to file evidence of damages "due to the onset of unforeseen issues." *Id*. The Arbitrator denied Excel's second motion to disallow damages and Mr. Carter's request for an extension. Dkt. Nos. 44-9, 44-10. Instead, the Arbitrator determined that she would award damages based on the hearing record only. *Id*.

The Arbitrator issued a Final Award on November 8, 2024, in which she found that Mr. Carter was entitled to back pay and lost benefits, in addition to pre-judgment interest. Dkt. No. 44-11. Mr. Carter "was also awarded reasonable attorney fees and given fourteen (14) days after receipt of the Interim Award to file and serve" evidence regarding his attorney's fees, but "[d]espite extensions granted, no documentation was submitted upon which to base an award of attorneys fees." *Id*. The Arbitrator also found that there was "insufficient evidence in the record to establish [Mr. Carter's] demand for compensatory damages." *Id*.

On November 12, 2024, Attorney Boykin filed a "Motion for Recalculation of Economic Damages to Conform to the Terms of the Arbitration Agreement." Dkt. No. 44-12. In it, she noted that Mr. Carter incurred "expenses as a result of this arbitration and those expenses were not disallowed in the Interim Award, but were not reflected in the Final Award." *Id*. She argued:

> the record clearly reflects that subsequent to his wrongful termination, [Mr. Carter] had to relocate to find suitable substitute employment. The record also reflects that he returned to the Virgin Islands for the in-person hearings and was present virtually for all remote hearings. The record reflects that he paid for rental of the conference room for the in-person hearing and was

> represented by counsel throughout these proceedings. In accordance with the parties' Arbitration Agreement, these expenses must be born [sic] by [Excel]. To do otherwise would constitute an impermissible re-write of the Agreement, which would exceed the Arbitrator's authority and be inconsistent with the prior Orders in this case.

Id. Consequently, Attorney Boykin requested that the "economic damages award be corrected by recalculating it to include all" the economic damages reflected in the record. *Id*. Those damages totaled $29,289.21. *Id*.[1]

The motion for recalculation contained a footnote in which Attorney Boykin admitted that she bore some blame for the delay in submitting the evidence related to damages because she encountered certain delays, but that those delays were excusable. The delays included a year of unanticipated emergency hospitalizations from April 21, 2024 through October 19, 2024. *Id*. The footnote further stated that "at no point in time did the Arbitrator deny [Mr. Carter] his economic damages." *Id*.

In response to the motion for recalculation, Excel filed an opposition brief noting that Mr. Carter's calculation of fees was unsupported by any evidence, particularly regarding his request for $27,737.50 in attorney's fees, which request was made without citation to any documentation or support. Dkt. No. 44-13.

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[1] Per Attorney Boykin's motion, this is the "total unaccounted economic damages." Dkt. No. 44-12. It accounts for Attorney Boykin's travel and lodging costs, the conference room reservation, and printing costs, as well as $27,737.50 in legal fees. *Id*. However, the motion seems to include a request for an additional $3,606.58 to compensate Mr. Carter for his "travel" and "lost emoluments from successor employer due to need to attend hearings." Because that $3,606.58 was not included in the "total," it is not clear exactly how much Mr. Carter was requesting be included in a modified award.

On December 12, 2024, the Arbitrator issued a "Disposition for Application of Modification of Award," (the "December 12 Disposition" or "Disposition") in which she clarified that Mr. Carter should have been reimbursed for the cost of the conference room in which the arbitration hearing was held, but found that, "[i]n all other respects [her] Award dated November 8, 2024, is reaffirmed." Dkt. No. 44-14.

II. The Motion to Lift Stay

Mr. Carter's January 2, 2025 Motion to Lift Stay set out the following facts: On November 8, 2024, the Arbitrator entered a Final Award in which she found "that Carter had suffered race-based discrimination and was wrongfully discharged." Dkt. No. 43 at 3 (citing Dkt. No. 43-1 at 2). Nevertheless, Mr. Carter sought to modify the final award. *Id.* at 2. On December 12, 2024, the Arbitrator issued a "modified final Arbitration Award." *Id*. According to Attorney Boykin, the Arbitrator found that the Arbitration Agreement was "limited." *Id*. at 3-4. The motion quotes the December 12 Disposition, which provided that Excel was to repay Mr. Carter for the cost of reserving the conference room used for the arbitration, but which otherwise reaffirmed the November 8, 2024 Final Award. *Id*.[2] Mr. Carter argued that, "[i]n rendering that award, the Arbitrator found that Carter's costs and expenses were not within the scope of the Arbitration Agreement." *Id*. Further, because Mr. Carter is entitled to costs

[2] Under the block quote restating the terms of the December 12 Disposition, Attorney Boykin cites to Exhibit 3. Dkt. No. 43 at 2. But the third exhibit filed with the motion was an email from the "Manager of ADR Services" that seemingly attached the Disposition; the Disposition was not included as an exhibit to the Motion to Lift Stay.

and attorney's fees under 42 U.S.C. § 1988 and 5 V.I.C. § 541, "the issue is ripe to proceed to trial before the District Court." *Id*.

In addition to the exhibit described in footnote two, *supra*, the motion attached as exhibits the November 8 Final Award and Mr. Carter's "Motion for Recalculation of Economic Damages to Conform to the Terms of the Arbitration Agreement," Dkt. Nos. 43-1, 43-2.

III. The Brief in Opposition

In response, Excel argued that the Arbitrator expressly ruled in her Interim and Final Award that Mr. Carter would be "'awarded reasonable attorney fees.'" Dkt. No. 44 at 4 (quoting Dkt. No. 44-2 at 25). Indeed, attorney's fees and costs had been treated as an arbitrable issue throughout the arbitration proceeds. They were explicitly included as an arbitrable matter in the Arbitration Agreement and were requested in Mr. Carter's demand for arbitration filed with the American Arbitration Association. *Id.* at 2-3.

After issuing the Interim Award, the Arbitrator gave Mr. Carter fourteen days "to serve documentation supporting the amount of damages and attorneys' fees he seeks to recover in connection with this arbitration." *Id*. (quoting Dkt. No. 44-2 at 25). Mr. Carter failed to timely comply with that timeline and instead sought and obtained an extension. *Id*. Thereafter, Mr. Carter again missed the deadline to file evidence related to attorney's fees and was again granted an extension after Excel moved to disallow damages. *Id*. at 4-5. Mr. Carter missed that deadline and again moved for an extension. *Id*. at 5. The Arbitrator denied Mr. Carter's request and ruled that the Final Award would be based "on the hearing record only." *Id*. (quoting Dkt. No. 44-10). The Arbitrator awarded damages to Mr. Carter but did not

"award Plaintiff attorneys' fees because '[d]espite extensions granted, no documentation was submitted upon which to base an award of attorneys fees.'" *Id*. at 6 (quoting Dkt. No. 44-11).

Based on this procedural history, Excel argued that Plaintiff's request to proceed to trial was not only "vexing" but that Mr. Carter's contention that the Arbitrator found that "'costs and expenses were not within the scope of the Arbitration Agreement,' [was] patently untrue." *Id*. at 7 (quoting Dkt. No. 43). The Motion notes that Attorney Morgan communicated with Attorney Boykin, "pursuant to Federal Rule of Civil Procedure 11 concerning the propriety of the Motion." *Id*. at 7 n.5.

Regarding the stay, Excel argued that arbitration stays "last 'until such arbitration has been had in accordance with the terms of the agreement.'" *Id*. (quoting 9 U.S.C. § 3). Because "all of Plaintiff's claims were fully and finally adjudicated before the Arbitrator, who issued a Final Award," Excel agreed that the stay should be lifted so that the case could be dismissed. *Id*. at 9-10. However, for the same reason, Excel argued Mr. Carter's request to proceed to trial should be denied. *Id*.

IV. Motion for Sanctions

In its "Memorandum of Law in Support of Defendant's Motion for Sanctions," Excel noted that the parties filed 14 status reports with the Court during the pendency of their arbitration proceedings, none of which contained "any suggestion that the Arbitrator would not or had not fully adjudicated all six of Mr. Carter's claims," which claims included his request for costs and fees. Dkt. No. 47 at 2. That is because, until the Motion to Lift Stay was

filed, the parties agreed that all of Plaintiff's claims were arbitrable and were, in fact, fully and finally arbitrated. *Id*. at 3. Thus, Mr. Carter's contention that "the Arbitrator found that Carter's costs and expenses were not within the scope of the Arbitration Agreement,' . . . is patently untrue." *Id*. at 3 (quoting Dkt. No. 43 at 2).

> As Plaintiff was well aware at the time of filing, the Arbitrator's July 29, 2024 Interim Award did, in fact, award damages and reasonable attorney's fees, as alluded to in the parties' August 26, 2024 Joint Status Report. *See* Exhibit 1. Similarly, the Arbitrator's November 8, 2024 Final Award, which Plaintiff referenced in the Motion, confirmed Plaintiff had been "awarded reasonable attorney fees and given fourteen (14) days after receipt of the Interim Award to file and serve any documentation supporting or evidencing only the amount of damages and attorneys' fees he [sought] to recover in connection with [the] arbitration." [Doc. No. 43-1 at 2]. Although the Arbitrator ultimately held Plaintiff forfeited any award of attorneys' fees because, "[d]espite extensions granted, no documentation was submitted upon which to base an award of attorney fees", *id.*, at no point did Plaintiff claim that the issue was not properly before the Arbitrator.

Id. (internal brackets in original).

Accordingly, Mr. Carter knew or should have known prior to filing the Motion to Lift Stay that the costs and fees he now seeks were considered by the Arbitrator as within the scope of the Arbitration Agreement. *Id*. at 4 The Motion to Lift Stay, therefore, represents a third attempt at obtaining legal fees that were only withheld because Mr. Carter failed to provide support for them. The motion "grossly misrepresented the facts by omitting critical information that undermines his position." *Id*. That is why, after reviewing the Motion to Lift Stay, on January 8, 2025, Excel served the instant Motion for Sanctions on Plaintiff's counsel

with a reference to the 21-day safe-harbor provision contained in Fed. R. Civ. P. 11(c)(2).[3] Because Mr. Carter failed to withdraw his motion in the 21-day period, Excel filed the instant Motion for Sanctions with the Court. *Id*.

"'Put simply, Rule 11 requires a person contemplating filing a paper with the court to 'stop, think, and investigate' before doing so.'" *Id*. at 4-5 (quoting *Wartsila NSD N. Am., Inc. v. Hill Int'l, Inc.*, 315 F. Supp. 2d 623, 627 (D.N.J. Mar. 30, 2004)). Excel argued that Mr. Carter failed to stop and think before filing the Motion to Lift Stay. *Id.* at 5-7. Moreover, the motion was sanctionable because it was filed for an improper purpose and because it contained unsupportable factual contentions in violation of Rule 11(b)(1) and (b)(3). *Id*. (citing Fed. R. Civ. P. 11(b)).

V. Opposition to the Motion for Sanctions

Plaintiff's response[4] mostly restated the facts and argument in his Motion to Lift Stay. He maintained that "the Arbitrator found that Carter's costs and expenses were not within

[3] Rule 11(c)(2) states that a motion for sanctions "must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service[.]" Fed. R. Civ. P. 11(c)(2).

[4] The Court ordered Mr. Carter to file his response to the Motion for Sanctions by February 7, 2025. Dkt. No. 48. The response was filed with the Court at 12:02 a.m. on February 8, 2025. After filing the opposition, Mr. Carter moved the Court for an extension of time through February 8, 2025 to file the responsive brief. Dkt. No. 50. In the Motion for Extension of Time, Attorney Boykin explained that she experienced "technical difficulties" while filing the opposition and that the late filing was not intentional, prejudicial, or motivated by an improper purpose and should be considered excusable neglect under Rule 6. *Id*. (citing Fed. R. Civ. P. 6). The Court agrees that the three-minute delay in filing is excusable under the circumstances proffered by Attorney Boykin and will grant Plaintiff's Motion for Extension of Time *nunc pro tunc* to February 7, 2025.

the scope of the Arbitration Agreement." Dkt. No. 49 at 2. The response, which cited to exhibits that were not filed, did not address Excel's allegations that Mr. Carter omitted information about the several missed deadlines to submit evidence, nor did it address Excel's contention, supported by exhibits, that the Arbitrator found that Mr. Carter was entitled to attorney's fees. Instead, Attorney Boykin argued, "Excel's Motion for Sanctions is inappropriate, baseless and wholly without merit." *Id*. at 3.[5] According to Attorney Boykin, the Arbitrator found that "the Arbitration Agreement only encompassed and required Excel to reimburse Carter the cost of the conference room rental." *Id*. Therefore, the Motion for Sanctions must be denied because Mr. Carter made no misrepresentation and because Excel suffered no harm. *Id*. Mr. Carter concluded by requesting that Excel reimburse him for his costs and expenses "in defending against its frivolous Motion [for Sanctions]." *Id*.

VI. The Hearing

A. Arguments on the Motion to Lift Stay

Attorney Boykin opened her argument by stating that the Arbitrator found that the only costs covered by the Arbitration Agreement were the costs Mr. Carter expended in reserving the conference room where the arbitration hearing was held. Therefore, Mr. Carter's claim for other costs and fees was ripe for trial.

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[5] The response also stated that "Excel had previously sought to have the Award reduced due to a delay caused by the serious illness of Carter's counsel. The Arbitrator granted that request." Dkt. No. 49 at 3. The Court did not receive any evidence that Excel sought to reduce the award, except to the extent that it twice moved to disallow damages, which motions were denied. Attorney Boykin did not further elaborate or explain what she meant by this statement.

The Court asked Attorney Boykin how she defined costs and fees. She clarified that she was seeking attorney's fees and costs incurred while arbitrating this case, Mr. Carter's lost wages from attending the arbitration hearing, and his costs for travel and lodging to be present at the arbitration.

The Court then asked Attorney Boykin to explain how her contentions could be true given that the Interim and Final Awards provided that Mr. Carter was entitled to attorney's fees and costs so long as such costs were substantiated with evidence. Attorney Boykin explained that her Motion to Lift the Stay was based solely on the December 12 Disposition. Because the Disposition did not specifically say that the Arbitrator considered costs and fees to be within the scope of the Arbitration Agreement, despite her request that the Award be recalculated to include those costs and fees, it should be inferred that the Arbitrator considered them outside the scope of the Agreement. She then explained that this motion was an alternative argument to another motion, which she intended to file, arguing that the Final Award should be vacated in part.[6]

Attorney Morgan responded by explaining that the Arbitrator's total award included only those costs and damages that were proven. The reason Mr. Carter was not awarded certain costs, including attorney's fees, is because he failed to substantiate those fees to the

[6] Attorney Boykin did not elaborate on what she would argue in that motion, or how it comported with the Motion to Lift Stay. It was filed shortly after the hearing; thereafter Attorney Boykin filed an amended motion to vacate the award. *See* Dkt. Nos. 52; 55. That motion contends that the Arbitrator reduced Mr. Carter's attorney's fees "as a sanction." Dkt. No. 55 at 13.

Arbitrator. She suggested that the record was replete with evidence demonstrating that the Arbitrator found all of Mr. Carter's claims, including his request for attorney's fees and costs, to be within the scope of the Agreement. Such evidence could be found in the Arbitrator's Interim and Final Awards.

Attorney Boykin then reemphasized that her Motion to Lift Stay concerned only the December 12 Disposition, not any of the Arbitrator's other findings or awards. While she agreed that costs and fees should have been arbitrable, she reiterated that because the Arbitrator did not make any findings regarding attorney's fees in her December 12 Disposition, they must have been beyond the scope of the Arbitration Agreement and therefore ripe for redress in the District Court.

B. Arguments on the Motion for Sanctions

Attorney Morgan explained that Excel afforded Mr. Carter and his counsel multiple opportunities to explain where in the record the Arbitrator found that costs and fees were not within the scope of the arbitration agreement or to otherwise withdraw the Motion to Lift Stay. She argued that because the motion had not been withdrawn, and because the Arbitrator specifically and repeatedly found that an award of Mr. Carter's reasonable attorney's fees was warranted based on the Agreement, the Motion to Lift Stay amounted to an effort to mislead the Court.

Attorney Boykin responded by saying that the sanctions motion was unwarranted, and that this dispute should have been resolved solely by litigating the Motion to Lift Stay. She argued that there was no support for the claim that Mr. Carter was attempting to mislead

the Court and no basis upon which the Court should award sanctions because Excel failed to demonstrate how it was damaged. She said she maintained a good faith belief that her motion was not frivolous and was, in fact, accurate based on the December 12 Disposition. Further, nothing was hidden from the Court in her filings. However, she acknowledged that the reason attorney's fees were withheld was because she failed to submit evidence substantiating those fees due to her hospitalization. Nevertheless, she concluded that because the December 12 Disposition did not specifically state that an award of attorney's fees and other costs was within the scope of the arbitration agreement, she would not presume the Arbitrator thought they were. Attorney Boykin also argued that Rule 11 was not designed to bar attorneys from being mistaken about certain claims and that any sanction issued pursuant to Rule 11 must be limited to the least burdensome sanction capable of deterring repetition of the misconduct.

Attorney Morgan rebutted by first saying that Excel had clearly incurred costs and expenses in addressing the Motion to Lift Stay, drafting the Sanctions Motion, and attending the hearing. Furthermore, Excel's sanctions motion was wholly appropriate because this was more than a mere disagreement over the propriety of proceeding to trial. Rather, there was no reasonable basis to support Mr. Carter's Motion to Lift Stay because the record abounded with evidence that undermined Plaintiff's position, including the December 12 disposition itself, which specifically incorporated and reaffirmed the November 8 Final Award. That Award included a finding that attorney's fees were within the scope of the Agreement.

Attorney Boykin's interpretation of the December 12 Disposition could only be reasonable if one completely ignored the record, including the expressly incorporated November 8 Award.

The Court then offered Attorney Boykin a chance to address the final paragraph of her response to Excel's motion for sanctions, in which she requested that Mr. Carter be awarded "his costs and fees incurred in defending against the Motion." Dkt. No. 49 at 3-4. Attorney Boykin denied requesting such sanctions, apparently withdrawing the request.

DISCUSSION

Whether the case should proceed to trial and whether the sanctions motion should be granted turn on the same question: did the Arbitrator find that Mr. "Carter's costs and expenses were not within the scope of the Arbitration Agreement." Dkt. No. 43 at 2. The Court finds, based on the arbitration record, that the Arbitrator ruled that Mr. Carter was entitled to attorney's fees and costs because the Arbitrator expressly said as much in at least four of her orders. *See* Dkt. Nos. 44-2 (Interim Award providing that Mr. Carter "is also awarded reasonable attorney fees."), 44-6 (Arbitrator's Order granting extension of time to file documents amount of "attorneys' fees [Mr. Carter] seeks to recover"), 44-11 (Final Award noting Mr. Carter "was also awarded reasonable attorney fees"), 44-14 (affirming that the Final Award remains in full force and effect). This necessarily means that the Arbitrator found that Mr. Carter's costs and expenses were within the scope of the Arbitration Agreement.[7] In each of these Orders, the Arbitrator was unequivocal: Mr. Carter's costs and

[7] Additionally, in this Circuit, "the courts, not the arbitrators, are tasked with interpreting agreements in order to determine whether the parties have indeed agreed to arbitrate

attorney's fees were within the scope of the Arbitration Agreement. Any suggestion to the contrary cannot be supported by a reasonable reading of the facts. Accordingly, the Court will deny the Motion to Lift Stay and will grant the Motion for Sanctions.

I. The Motion to Lift Stay

The Court has determined that the Arbitrator ruled on the propriety of awarding Mr. Carter his attorney's fees. Consequently, the Court finds that the issue of attorney's fees is not ripe to proceed to trial. Moreover, the Order staying this case provided that the stay was to last only through arbitration of Plaintiff's claims. Dkt. No. 18 at 9; *see also* 9 U.S.C. § 3 (trial should be stayed "until such arbitration has been had in accordance with the terms of the agreement"). "A stay of litigation pending arbitration may be lifted if . . . an award issues *without a subsequent appeal*." *See* Thomas H. Oehmke & Joan M. Brovins, 2 Com. Arb. § 53:11 Mandatory stay of litigation under FAA § 3—Lifting a Stay (emphasis added). When a party requests that an arbitration award be vacated or modified pursuant to 9 U.S.C. §§ 10 or 11, a court may stay proceedings related to the enforcement of the award. 9 U.S.C. § 12. In light of Mr. Carter's Amended Motion to Vacate in Part and Modify in Part the Arbitration Award, Dkt. No. 55, which is currently pending before the District Judge, the Court finds it

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disputes whose arbitrability is contested." *Rite Aid of Pa., Inc. v. United Food & Com. Workers Union, Local 1776*, 595 F.3d 128, 131 (3d Cir. 2010). When ruling on Excel's motion to compel arbitration, this Court found that all of Mr. Carter's claims were "undeniably covered by the [A]greement." Dkt. No. 18. By awarding Mr. Carter attorney's fees, but ultimately determining that there was no basis upon which to determine the appropriate award amount for fees and costs, the Arbitrator clearly adhered to the Court's determination that all claims, including Mr. Carter's request for attorney's fees, were within the scope of the Agreement.

appropriate to leave the stay in place until such time as the District Judge determines how the case shall proceed. Therefore, the Motion to Lift Stay and Proceed to Trial is denied.

II. The Motion for Sanctions

A. Legal Standard

Rule 11(b) provides:

> By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b). "If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1).[8]

[8] "[A] Magistrate Judge has the authority to decide a motion for sanctions under Rule 11 when the motion [does] not dispose of any claims or defense[s]." *Haim v. Neeman*, No. 12-cv-0351, 2014 WL 12617792, at *1 (D.N.J. June 11, 2014)

"In scrutinizing a filed paper against the[requirements of Rule 11], courts must apply an objective standard of reasonableness under the circumstances." *Mary Ann Pensiero, Inc. v. Lingle*, 847 F.2d 90, 94 (3d Cir. 1988). Courts should not look at a party's filing with hindsight, but must determine what was reasonable to believe at the time the motion was submitted. *Id*. Rule 11 must not be used as an automatic penalty against an attorney solely because they took "'imaginative legal or factual approaches to applicable law.'" *Id*. (quoting *Gaiardo v. Ethyl Corp.*, 835 F.2d 479, 482 (3d Cir. 1987)).

To determine whether Rule 11 sanctions are appropriate, courts may consider:

> how much time for investigation was available to the signer; whether he had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; [ ] whether he depended on forwarding counsel or another member of the bar; [and] whether [one] is in a position to know or acquire the relevant factual details.

Young v. Smith, 269 F. Supp. 3d 251, 334 (M.D. Pa. 2017) (alterations in original) (citing Fed. R. Civ. P. 11 Advisory Committee Notes to 1983 Amendment and *CTC Imports & Exports v. Nigerian Petroleum Corp*., 951 F.2d 573, 578 (3d Cir. 1991)). "Rule 11 Sanctions are appropriate, for instance, when the claimant exhibits a deliberate indifference to obvious facts." *Id*. at 333 (internal quotation marks omitted).

If a court finds that a filing is sanctionable under Rule 11, the sanctions imposed "must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." Fed. R. Civ. P. 11(c)(4). "The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for

effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation." *Id.*; *see also Zuk v. E. Pa. Psychiatric Inst. of the Med. Coll. of Pa.*, 103 F.3d 294, 300-01 (3d Cir. 1996) ("the main purpose of Rule 11 is to deter, not to compensate.") (quoting 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1336 (2d ed. Supp. 1996)).

In determining the appropriate sanction, a court can consider:

> [w]hether the improper conduct was willful, or negligent; whether it was part of a pattern of activity, or an isolated event; whether it infected the entire pleading, or only one particular count or defense; whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law; what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; what amount is needed to deter similar activity by other litigants: all of these may in a particular case be proper considerations.

Keister v. PPL Corp., 318 F.R.D. 247, 270 (M.D. Pa. 2015) (citing Fed. R. Civ. P. 11 Advisory Committee Notes to 1993 Amendment and *In re Cendant Corp. Derivative Action Litig.*, 96 F. Supp. 2d 304, 407-08 (D.N.J. 2000)). In sum, the Court "should be guided by equitable considerations." *Doering v. Union Cnty. Bd. of Chosen Freeholders*, 857 F.2d 191, 195 (3d Cir. 1988).

In some cases, a court may determine that it would be most equitable to sanction only the attorney who violated Rule 11 and not the party represented by that attorney. *Keister*, 318 F.R.D. at 272. In those cases, a court should consider:

> [whether the attorney] has already been subject to adverse press scrutiny as a result of the sanction by the district court; [whether the attorney] has been subject to at least one other disciplinary action; [whether] any other evidence

> [ ] would tend to substantiate [the attorney's] claim that he has already been deterred sufficiently from filing frivolous actions; the attorney's history of filing frivolous actions or alternatively, his or her good reputation; the defendant's need for compensation; the degree of frivolousness; whether the frivolousness also indicated that a less sophisticated or expensive response [by the other party] was required; and the importance of not discouraging particular types of litigation which may provide the basis for legislative and executive ameliorative action when the courts lack power to act.

Id. (alterations in original) (quoting *Doering*, 857 F.2d at 195-97).

B. The Filing of the Motion to Lift Stay Violates Rule 11(b)

Attorney Boykin's suggestion that the Arbitrator found that Mr. Carter's costs and fees "were not within the scope of the Arbitration Agreement" is not merely an "imaginative" spin on the facts, nor is it a reasonable position to take given the evidence and information available to Attorney Boykin when she filed the motion. Rather, the filing contradicts numerous findings and orders issued by the Arbitrator that were available to Attorney Boykin at the time she filed her motion. In fact, her Motion to Lift Stay contradicts her own filings with this Court and with the Arbitrator. *See* Dkt. No. 42 (Joint Status Report, signed by Attorney Boykin, stating that the Arbitrator ordered the parties to file evidence regarding the amount of attorney's fees sought in connection with the arbitration); Dkt. No. 44-5 (Mr. Carter's motion to the Arbitrator acknowledging the Interim Award provided an opportunity "to submit documentation supporting the damages and attorney's fees he seeks to recover.").

Moreover, the Court finds Attorney Boykin's explanation in support of her motion—that the motion was based solely on the Arbitrator's findings in the December 12 Disposition—vexing and intentionally misleading. First, the Disposition clearly incorporates

the Final Award. *See* Dkt. No. 44-14 ("In all other respects my Award dated November 8, 2024, **is reaffirmed and remains in full force and effect**.") (emphasis added). It defies logic or explanation to suggest that a document that expressly incorporates another document should be read alone.

Second, even were one to ignore the reference to the November 8 Award, the December 12 Disposition does not at all suggest that the Arbitrator found that attorney's fees and costs were outside the scope of the Arbitration Agreement. Attorney Boykin has repeatedly failed to explain what aspect of the December 12 Disposition could possibly support her interpretation. While she said at oral argument that she was unwilling to presume the Arbitrator would say something not explicitly written in her orders, Attorney Boykin did exactly that by presuming that the Arbitrator's silence on the issue of attorney's fees in the Disposition was somehow a specific finding that attorney's fees were not within the scope of the Agreement.

Consequently, the Court finds that Attorney Boykin "exhibit[ed] a deliberate indifference to obvious facts," *Smith*, 269 F. Supp. 3d at 333, when she filed the Motion to Lift the Stay and Proceed to Trial. Moreover, a reasonable attorney in the same position as Attorney Boykin at the time she drafted and filed the motion would have known that her motion was based on a mischaracterization of the arbitration proceedings. The Court further finds that Attorney Boykin's failure to provide the Court with any background about the multiple extensions she was given to file evidence related to fees and costs was an attempt to mislead the Court because she consciously withheld important, relevant information.

Accordingly, the Court finds that Attorney Boykin violated Rule 11(b)(3)[9] when she signed and filed the Motion to Lift Stay and Proceed to Trial and when she refused to withdraw the motion after Excel brought the motion's shortcomings to her attention.

C. Monetary Sanctions, Payable to Excel, Are Appropriate

The sanctionable conduct at issue is significant. The inaccurate characterization of the Arbitrator's findings infected the entirety of the Motion to Lift Stay and all subsequent filings and arguments before this Court. Especially concerning to the Court is the fact that Attorney Boykin has yet to acknowledge that her filing was misleading, despite having been alerted to the issue through Excel's Rule 11(c)(2) letter, Excel's response to the Motion to Lift Stay, Excel's Motion for Sanctions, and throughout oral arguments. In fact, she has consistently maintained that she did not hide anything from the Court and that her motion was accurate, notwithstanding the significant evidence to the contrary.

None of the factors that might caution against sanctions are present here. For example, Attorney Boykin, a trained lawyer, made this filing based on her own interpretation of the December 12 Disposition, not representations from her client or anyone else. Nor did the Motion to Lift Stay require significant investigation. Instead, the motion presents an

[9] Excel's Motion for Sanctions proffered that the Motion to Lift Stay "clearly violates Fed R. Civ. P. 11(b)(1)" in addition to Rule 11(b)(3). Although the motion was frivolous and filed without basis in fact, the Court was not presented with evidence demonstrating that it was filed for an "improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation." Fed. R. Civ. P. 11(b)(1). Accordingly, while the Court agrees the filing violates Rule 11(b)(3), it does not find that Attorney Boykin violated Rule 11(b)(1).

implausible interpretation of several documents that were readily available to Attorney Boykin.

Accordingly, the Court must consider what remedy would most effectively deter Attorney Boykin from similar conduct in future proceedings. Given Excel's compliance with Rule 11(c)(2) and Attorney Boykin's unwillingness to admit error—which resulted in a significant expenditure of resources by Excel—the Court finds monetary sanctions, payable to Excel, appropriate.

In order to effectuate this sanction, the Court will provide Excel until May 30, 2025, to file a motion for reasonable attorney's fees that evidences the amount of hours worked on the response to the Motion to Lift Stay, the Motion for Sanctions, and the oral arguments for both, in addition to travel costs associated with attending the argument on the motions. That motion should also include argument about the appropriate hourly rate for the Court to apply. Thereafter, Attorney Boykin will have until June 13, 2025 to file a response. Excel shall not file a reply without leave of Court.

Importantly, the Court finds that it would be inappropriate to sanction Mr. Carter for this misconduct, because it does not seem that he was responsible for the filings submitted on his behalf in this Court. Moreover, Attorney Boykin is the person who certified the veracity of her claims by signing the Motion to Lift Stay and continued to present misleading contentions at oral argument. Therefore, none of the costs in responding or adhering to this sanction order shall be passed on to Mr. Carter.

CONCLUSION

Attorney Boykin violated Rule 11 by filing a motion that intentionally mischaracterized the arbitration proceedings and misled the Court. Therefore, the Court now denies that motion and finds a sanction of attorney's fees, payable to Excel for the time expended in responding to the Motion to Lift Stay and the subsequent proceedings and for costs expended to travel to attend the hearing on the motions, an appropriate vehicle to meet the severity of the violation and deter future misconduct.

Accordingly, it is hereby **ORDERED:**

1. Plaintiff Melvin Carter's Motion to Lift Stay and Proceed to Trial on All Issues Outside the Arbitration Agreement, Dkt. No. 43, is **DENIED**.
2. Defendant Excel Maintenance and Construction VI Inc.'s Motion for Sanctions, Dkt. No. 46, is **GRANTED**.
3. Plaintiff Melvin Carter's Motion for Extension of Time to File Opposition to Motion for Sanctions, Dkt. No. 50, is **GRANTED** *nunc pro tunc* to February 7, 2025.
4. Excel shall have up to and including **May 30, 2025**, to file a Motion for Attorney's Fees proposing an appropriate hourly rate and providing evidence of how many hours Excel spent on the response to the Motion to Lift Stay, the Motion for Sanctions, and the oral arguments for both, as well as evincing the amount spent on travel costs to attend the hearing on the motions.

5. Thereafter, Attorney Boykin will have up to and including **June 13, 2025,** to file a response.

ENTER:

Dated: May 16, 2025

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE