

Petition for Writ of Mandamus Granted and Memorandum Opinion filed April 5, 2018.



In The

Fourteenth Court of Appeals

NO. 14-18-00124-CV

IN RE WILLIAM EARLE COFFEY, JR., ET AL, Relators

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
165th District Court
Harris County, Texas
Trial Court Cause No. 2017-62696**

MEMORANDUM OPINION

On February 13, 2018, relators William Earle Coffey, Jr., Landon B. Marino, Travis Lyn Knapp, and Shawn Lewis Walker filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (West Supp. 2017); *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the Honorable Ursula

Hall, presiding judge of the 165th District Court of Harris County, to rule on relators' motion to confirm an arbitration award.

Because Respondent, under the circumstances of this case, has not ruled the motion within a reasonable time, we conditionally grant the petition for writ of mandamus.

FACTUAL AND PROCEDURAL BACKGROUND

On or about September 11, 2014, relators commenced an arbitration action against UBS Financial Services, Inc. ("UBS") pursuant to the FINRA Code of Arbitration Procedure. Relators sought relief in the form of an award from an arbitration panel ordering the expungement of customer complaints against relators from the public record.

On May 30, 2017, the arbitration panel held final hearings. On July 18, 2017, the panel issued a final award, which recommended that the customer complaints against relators be expunged from their records.

Relators filed a motion to confirm the arbitration award and enter judgment on September 21, 2017. UBS filed a response to the motion stating it did not oppose confirmation of the award.

On November 20, 2017, the motion was submitted to Respondent by written submission. Relators have made several requests for a ruling and even requested a hearing on the motion, but were told by the clerk that no oral hearing would be permitted.

MANDAMUS STANDARD

When a motion is properly filed and pending before a trial court, the act of giving consideration to and ruling on that motion is a ministerial act.¹ A trial court has a ministerial duty to consider and rule on motions properly filed and pending before it, and mandamus may issue to compel the trial court to act. *In re Henry*, 525 S.W.3d 381 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding); *In re Greater McAllen Star Props., Inc.*, 444 S.W.3d 743, 748 (Tex. App.—Corpus Christi 2014, orig. proceeding). A trial court is required to rule on a motion within a reasonable time after the motion has been submitted to the court for a ruling or a ruling on the motion has been requested. *In re Foster*, 503 S.W.3d 606, 607 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding). The record must show both that the motion was filed and the trial court has not ruled on the motion within a reasonable time after being requested to do so. *Id.* at 607.

ANALYSIS

The record shows that relators' motion to confirm the arbitration award is unopposed and has been pending for more than four months (since November 20, 2017). Despite several requests, Respondent has yet to rule. The record shows no reason for Respondent's delay in ruling on the motion. Relators claim that Respondent's delay in ruling is causing them substantial harm because the customer

¹ See *Eli Lilly and Co. v. Marshall*, 829 S.W.2d 157 (Tex. 1992) (mandamus conditionally issued to compel trial court to conduct a hearing); *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992) (orig. proceeding); *In re Bishop*, No. 14-06-00636-CV, 2006 WL 2434200, at *1 (Tex. App.—Houston [14th Dist.] Aug. 24, 2006, orig. proceeding) (per curiam) (mem. op.).

complaints on their records which the arbitration panel has ordered to be expunged continue to be made public. We conclude, under the circumstances of this case, where the motion is unopposed and it appears that the delay in ruling is prejudicing relators, that Respondent has abused her discretion by not ruling on the motion within a reasonable time. *See Rowe v. Watkins*, No. 08-09-00001-CV, 2009 WL 2623353, at *2 (Tex. App.—El Paso, 2009) (mem. op.) (holding that trial court’s delay of three months in ruling on a motion, filed pursuant to Texas Rule of Appellate Procedure 24 to determine the type and amount of security which appellant must post to suspend enforcement of the judgment, was unreasonable under the circumstances of that case).

We therefore conditionally grant the petition for writ of mandamus and direct Respondent to rule on the motion. We express no opinion as to any of the issues raised in the motion.

We are confident the trial court will act in accordance with this opinion. The writ of mandamus shall issue only if the trial court fails to do so.

PER CURIAM

Panel consists of Justices Busby, Brown, and Jewell.