

CAUSE NO. 2026-25756

**CAROLINE ALLISON AND RICHARD
ALLISON**
Plaintiffs

v.

**BORUNDA, P.C., JORGE BORUNDA,
NICHOLAS ABAZA, LAW OFFICES OF
NICHOLAS ABAZA, P.C., MICHAEL
TREVINO, and LAW OFFICE OF
MICHAEL A. TREVINO, PLLC**
Defendants

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IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

269th JUDICIAL DISTRICT

PLAINTIFFS' MOTION TO RECONSIDER AND MODIFY ORDER

Plaintiffs Caroline Allison and Richard Allison, Jr., file this motion to reconsider and modify the Court's order of dismissal signed August 21, 2026 ("Plaintiffs' Motion"), and would respectfully show as follows.

INTRODUCTION

Plaintiffs respectfully request that the Court reconsider its August 21, 2026 Order Granting Defendants' 91a Motion to Dismiss (the "Dismissal Order").¹ The arbitrator's undisclosed partiality, is properly subject to review through an equitable bill of review. The Court granted the Rule 91a motion because it believed that the arbitrator's undisclosed partiality could not, as a matter of law, constitute an "official mistake" for bill-of-review purposes. That ruling should be reconsidered. Although the fraud, accident, or wrongful-act branch of a bill of review's second element reach only the opposing party's misconduct, the official-mistake branch is the doctrine's designated—and here the proper—channel for a wrong worked by a neutral acting on the court's behalf. And the arbitrator here was no ordinary independent neutral: she conducted an arbitration this Court compelled by its May 3, 2022 order, and her award became this Court's July 15, 2024 judgment. On those facts, she

¹ See Order Granting Defs.' 91a Motion to Dismiss, August 21, 2026.

was charged with duties directly imposed by the Court for the administration of its own functions—the touchstone of the official-mistake doctrine. Taken as true, as Rule 91a requires, Plaintiffs’ allegations state a valid bill of review.

ARGUMENTS & AUTHORITIES

A. Standard of Review

A bill of review is an equitable proceeding brought by a party seeking to set aside a prior judgment that is no longer subject to challenge by motion for new trial or appeal. *Caldwell v. Barnes*, 154 S.W.3d 93, 96 (Tex. 2004); *Baker v. Goldsmith*, 582 S.W.2d 404, 406 (Tex.1979). To set aside a judgment by bill of review, a petitioner must ordinarily plead and prove (1) a meritorious claim or defense to the cause of action alleged to support the judgment, (2) that he was prevented from making by the fraud, accident, or wrongful act of his opponent, or official mistake, and (3) unmixed with any fault or negligence of his own. *Caldwell*, 154 S.W.3d at 96; *Baker*, 582 S.W.2d at 406-7.

The denial of a bill of review is generally reviewed under an abuse of discretion standard. *Morris v. O’Neal*, 464 S.W.3d 801, 806 (Tex. App.—Houston [14th Dist.] 2015, no pet.). A trial court abuses its discretion if it acts arbitrarily, unreasonably, or without reference to guiding rules or principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985). However, a court’s order dismissing claims and defenses pursuant to Rule 91a constitutes a question of law, subject to *de novo* review. *San Jacinto River Auth. v. Medina*, 627 S.W.3d 618, 628 (Tex. 2021). This is because whether a party is entitled to a remedy under the facts alleged is a question of law. *See In re Farmers Tex. Cty. Mut. Ins. Co.*, 621 S.W.3d 261, 266 (Tex. 2021).

Because the Dismissal Order disposed of Plaintiffs’ only claim, it is a final judgment, and this Court retains plenary power to reconsider, vacate, or modify it. Tex. R. Civ. P. 329b(d), (g); *Crotts v. Cole*, 480 S.W.3d 99, 102–03 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (final Rule 91a dismissal orders are subject to Rule 329b, and a timely post-judgment motion seeking a substantive change

qualifies as a motion to modify that extends the court’s plenary power). Within that plenary period, a trial court not only may but should reconsider and vacate a dismissal when the ruling was mistaken. *See In re Panchakarla*, 602 S.W.3d 536, 539–40 (Tex. 2020) (per curiam) (trial court acted within its plenary jurisdiction in vacating a dismissal order on a timely motion for reconsideration); *Fruehauf Corp. v. Carrillo*, 848 S.W.2d 83, 84 (Tex. 1993) (trial court has inherent plenary power to reconsider its own rulings until judgment becomes final).

B. The arbitrator’s nondisclosure in discharging this Court’s compelled-arbitration order was an “official mistake,” contrary to the premise of the Dismissal Order.

The Court dismissed Plaintiffs’ claim on the view that the arbitrator’s conduct could not be an “official mistake.” That premise should be reconsidered. Because the fraud, accident, or wrongful-act branch of the second element reaches only the opposing party’s misconduct, the official-mistake branch is the doctrine’s designated alternative for a wrong worked by one acting on the court’s behalf. *See Monbray v. Avery*, 76 S.W.3d 663, 683 (Tex. App.—Corpus Christi 2002, pet. denied) (the official-mistake doctrine is “completely distinct” from the fraud branch and supplies an alternative means of satisfying the second element). A bill of review plaintiff need not prove fraud, accident, or the wrongful act of the opposing party when the plaintiff demonstrates that the judgment resulted from official mistake. *Transworld Fin. Servs. Corp. v. Briscoe*, 722 S.W.2d 407, 408 (Tex. 1987); *Baker*, 582 S.W.2d at 407; *Monbray*, 76 S.W.3d at 683-84.

An “official mistake” in the context of a bill of review refers to either erroneous information given by the court or a court functionary or a mistake or error of the same in the discharge of official duties. *See Monbray*, 76 S.W.3d at 684. In the context of the elements required to establish an equitable bill of review, an official is anyone “charged with duties directly imposed by that court, or by applicable statutes and regulations, to act on the court’s behalf in the proper administration of its functions.” *Id.* at 663.

A court has a statutory obligation to vacate an arbitration award if the rights of a party were prejudiced by evident partiality by an arbitrator appointed as a neutral arbitrator. Tex. Civ. Prac. & Rem. Code § 171.088(a)(2)(A). The Texas Supreme Court has held for nearly two decades that “a neutral arbitrator is evidently partial if she fails to disclose facts that might, to an objective observer, create a reasonable impression of her partiality.” *Tenaska Energy, Inc. v. Ponderosa Pine Energy, LLC*, 437 S.W.3d 518, 528 (Tex. 2014). Similarly, the Court has held that a party does not waive an evident partiality challenge if it proceeds to arbitrate without knowledge of the undisclosed facts. *Id.*; *Burlington N. R.R. v. TUCO*, 960 S.W.2d 629, 636 (Tex. 1997).

The undisclosed information need not establish that an arbitrator was biased; rather, the nondisclosure itself serves as a basis for vacating the award. *TUCO, Inc.*, 960 S.W.2d at 636; *Burke v. Hous. PT BAC Office Ltd. P'ship (Bank of Am.)*, 726 S.W.3d 828, 832 (Tex. 2025). This is because “[i]f waiver cannot be predicated on undisclosed information, that information must nonetheless be more than trivial to satisfy the standard for evident partiality.” *Tenaska Energy*, 437 S.W.3d at 528.

Texas courts have not explicitly enumerated the specific individuals that qualify as an “official” under the “official mistake” doctrine in the bill of review context. Rather, caselaw has only outlined individuals in situations that would *not* constitute the kind of official that would fall under the “official mistake” doctrine. Such individuals excluded from the doctrine include the Secretary of State,² a litigants’ attorney without acts of fraud,³ Domestic Relations Officers,⁴ etc. Notably, Texas Courts have not commented on whether the “official mistake” doctrine is inapplicable to an arbitrator, or even the court itself.

² *Matthews Trucking Co. v. Smith*, 682 S.W.2d 237, 239 (Tex. 1984) (“The Secretary of State is not an officer of the court or an official court functionary.”).

³ *Transworld Fin. Servs. Corp. v. Briscoe*, 722 S.W.2d 407, 408 (Tex. 1987) (holding that “a bill of review petitioner who alleges that he suffered an adverse judgment because of the fraudulent or wrongful acts of his attorney is not excused from the necessity of pleading and proving extrinsic fraud on the part of his opponent.”).

⁴ *Bialaszczyński v. Bialaszczyński*, 557 S.W.3d 88, 93 (Tex. App.—Austin 2017, no pet.) (“We conclude that the DRO and its employees are not “official court functionaries” for the purposes of application of the official-mistake doctrine.”).

However, the commonality in determining who a court official is for the purposes of the bill of review exception is explained in *Mowbray*:

Common to all of these descriptions when examined in the context of the bill of review cases in which they appeared is that the official was always under the direct supervision of the court that rendered the judgment or charged with duties that were directly imposed by that court (or by way of appropriate statutes or regulations) for the proper administration of that court's functions and, in those matters, acting on the court's behalf.

Mowbray, 76 S.W.3d at 686.

- i. **The arbitrator's failure to disclose her evident partiality in the discharge of the Court's Order Compelling Arbitration falls under the "official mistake" doctrine.**

The arbitrator's failure to disclose her evident partiality falls under the "official mistake" doctrine as the arbitrator was discharging duties that were directly imposed by the Court pursuant to the Court's order Compelling Arbitration.⁵ See *Bialaszczyński*, 557 S.W.3d at 92 ("Essentially, 'official mistake' in the context of a bill of review refers to either erroneous information given by the court or an official court functionary or a mistake or error of the same in the discharge of required official duties."). "An 'official mistake' for bill of review purposes occurs when the judgment in the underlying case resulted from the bill of review plaintiff's reliance on a court officer who improperly executed the court officer's official duties." *21st Century Centennial Ins. Co. v. Ramirez*, 675 S.W.3d 356, 366 (Tex. App.—Corpus Christi 2023, no pet.) (citing *Transworld*, 722 S.W.2d at 408); see *Marathon Petroleum Co. LP v. Cherry Moving Co.*, 550 S.W.3d 791, 804 (Tex. App.—Houston [14th Dist.] 2018, no pet.). In other words, an "official mistake occurs when a court official commits error in the discharge of his official duties, and that error prevents the complainant from presenting his defense in the former action or from challenging the judgment by post-judgment actions or appeal." *Ramirez*, 675 S.W.3d at 366; *Baker*, 582 S.W.2d at 407; *Mowbray*, 76 S.W.3d at 683.

⁵ Order Granting Motion to Compel Arbitration and Stay All Proceedings Filed by Defendants, May 3, 2022.

As discussed in their First Amended Petition for Bill of Review,⁶ which are facts this Court must (and did) take as true, Plaintiffs discovered the undisclosed relationships between the arbitrator and Defendants well after the Court's entry of final judgment. A probe into the undisclosed bias led to an investigative report that fully uncovered the conflicts of interest engaged in by the arbitrator, and a two-part investigative series was published exposing the situation.⁷ The existence of the investigative series by itself strongly supports the notion that an objective observer has *already found* reasonable impressions of the arbitrator's partiality. *Id.* at 529.

Regardless, Plaintiffs' bill of review, and the Court's dismissal thereof, is centered around the arbitrator's mistakes and the erroneous information she provided during the arbitration that was compelled by this Court on May 3, 2022. As the arbitration award was adopted and confirmed by this Court, it is reasonable to conclude that the arbitrator was an official, acting pursuant to duties imposed by the court and by statute, to act on the court's behalf. The arbitrator's lack of adherence to applicable statutes and regulations in conducting the compelled arbitration thus constitute "official mistakes" and support rendition of equitable bill of review as the arbitrator was charged with duties that were directly imposed by the court (the compelled arbitration) *and* by way of appropriate statutes or regulations (e.g., Tex. Civ. Prac. & Rem. Code § 171.088(a)(2)(A) and related Texas Supreme Court case law discussed above).

That is precisely *Mowbray*'s touchstone—duties "directly imposed by that court . . . for the proper administration of that court's functions." *Mowbray*, 76 S.W.3d at 686. It also distinguishes the neutrals courts have placed outside the doctrine, whose duties were "totally unrelated to the machinations of" the rendering court; here, by contrast, the compelled arbitration was the very

⁶ See First Amended Petition for Bill of Review, Aug. 18, 2026.

⁷ See Dolcefino Video Investigates #1: Damn Lawyers - Allison Family Probate Case, available here <https://www.youtube.com/watch?v=j5aWUy6oJT0> and Dolcefino Video Investigates #2: Damn Lawyers – Rigged Arbitration – the Stench of Cronyism, available here https://youtu.be/lgHSGHJc7xE?si=ol_w95WdbGQUAmUd.

mechanism through which this Court adjudicated the parties' dispute. *Cf. Rodriguez v. Holmstrom*, 627 S.W.2d 198, 200 n.1 (Tex. App.—Austin 1981, no writ) (justice of the peace not an official functionary of the rendering court). While no Texas decision has yet decided whether a court-compelled arbitrator qualifies as a court functionary, the doctrine's rationale supports that conclusion on these facts.

The arbitrator's failure to disclose the extent of her relationship with the Defendants in the underlying arbitration yielded a reasonable impression of the arbitrator's partiality to an objective observer as evidenced by the investigative series. Thus, the arbitrator had a duty to disclose additional information, and her failure to do so constitutes evident partiality. The existence of the partiality not only warrants vacating the arbitration award, but it also constitutes an "official mistake" for bill of review purposes as the judgment in the underlying case resulted from the "reliance on a court officer who improperly executed the court officer's official duties." *Transworld*, 722 S.W.2d at 408.

In fulfilling the Court's order compelling arbitration and issuing the arbitration award, the arbitrator's mistake or error of failing to disclose her partiality was accordingly made in the discharge of an official court duty imposed by the trial court that rendered the judgment. *Mowbray*, 76 S.W.3d at 686. As such, this Court should reconsider its Dismissal Order and modify the judgment dismissing Plaintiffs' claims.

ii. Actions taken by the Court also support relief via equitable bill of review.

The Court itself is certainly a "court officer who is under the direct supervision of the court that rendered the judgment," and a judge would be "charged with duties directly imposed by that court, or by applicable statutes and regulations, to act on the court's behalf in the proper administration of its functions." *Mowbray*, 76 S.W.3d at 683; *see also Phelan v. Norville*, 2017 WL 3182894 at *3 (Tex. App.—Waco July 26, 2017, no pet.). Likewise, the issuance of judgments and determinations of rulings for parties' motions would be considered the "discharge of required official duties" by the Court. *Mowbray*, 76 S.W.3d at 684.

Accordingly, the arbitrator's partiality warrants reconsideration of the Court's judgments and modification of the Dismissal Order because such judgments constitute official mistakes made in the discharge of the duties imposed by this Court. That is, the Court was incorrectly informed that no evident partiality existed at the time the Court entered its July 15, 2024 Order. The subsequent issuance of the Dismissal Order by this Court is therefore an "official mistake" made by a court official (the Court), based upon mistaken, erroneous information (lack of partiality by the arbitrator) while "under the direct supervision of the court that rendered the judgment or who is charged with duties directly imposed by that court." *Mowbray*, 76 S.W.3d at 687. Upon realization of the arbitrator's nondisclosure, the Court was provided a basis for vacating the award. *See TUCO, Inc.*, 960 S.W.2d at 636; *Burke*, 726 S.W.3d at 832.

The dismissal of Plaintiffs' claims despite the realization of the arbitrator's evident partiality establishes a judgment that resulted from an "official mistake" made by an official acting on the court's behalf. Plaintiffs therefore respectfully request that the Court reconsider its Dismissal Order and modify its judgment by overturning the Defendants' Rule 91a Motion to Dismiss.

CONCLUSION & PRAYER

Plaintiffs respectfully request that the Court grant this motion, reconsider and modify its August 21, 2026 Dismissal Order, and overturn the Defendants' Rule 91a Motion to Dismiss. Plaintiffs further request any and all other relief to which they may show themselves justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been forwarded to all known parties and/or counsel of record pursuant to the Texas Rules of Civil Procedure on this, the 18th day of September, 2026.

/s/ David Eric Kassab

David Eric Kassab

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