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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES HOWDEN & COMPANY
LTD,

Petitioner,

v.

BOSSART, LLC,

Respondent.

CASE NO. C15-1977JLR

ORDER

I. INTRODUCTION

This matter comes before the court on Petitioner James Howden & Company LTD’s (“Howden”) motion for entry of judgment on a monetary foreign arbitration award (“the Award”) pursuant to Federal Rule of Civil Procedure 58. (Mot. (Dkt. # 11); *see also* Ricketts Decl. (Dkt. # 3) ¶ 5, Ex. 10-11 (“the Award”).)¹ Having considered the

¹ This order cites to the Award and other exhibits using their original pagination, not the page numbers created by the Electronic Filing System.

1 submissions of the parties, the appropriate portions of the record, and the relevant law,
2 the court GRANTS Howden’s motion. The court will enter judgment in the amounts and
3 currencies stated in the Award for the reasons given below.

4 II. BACKGROUND

5 Howden and Respondent Bossart, LLC (“Bossart”) entered arbitration on the basis
6 of an arbitration clause in a contractual agreement. (Ricketts Decl. ¶ 4, Ex. 9 at 3.) On
7 July 6, 2015, a foreign arbitrator entered the Award in the following amounts: Howden
8 owed Bossart \$165,773.87; Bossart owed Howden £385,026.81 plus \$500.00. (Award at
9 58-59.) The awarded amounts are subject to five percent per annum interest until paid.

10 (*Id.*) On February 5, 2016, the court granted Howden’s petition to confirm the Award
11 “pursuant to section 207 of the Federal Arbitration Act, 9 U.S.C. § 207, and legislation
12 implementing the Convention on the Recognition and Enforcement of Foreign Arbitral
13 Awards of June 10, 1958, 9 U.S.C. § 201 *et seq.*” (“the Convention”). (2/5/16 Order
14 (Dkt. # 10) at 1.)

15 Howden subsequently filed this motion for entry of judgment on the Award. In its
16 opening brief, Howden asked the court to convert the entire Award to United States
17 dollars and offset the amount Howden owes Bossart, for a single judgment against
18 Bossart for \$433,835.54 plus interest. (Mot. at 1-2.) Bossart responded,² claiming that
19 Washington State law requires the court to convert the entire Award into British pounds

20
21 ² Bossart initially filed a *pro se* response. (See Dkt. # 13.) The court struck that response
22 and gave Bossart time to obtain counsel. (3/8/16 Order (Dkt. # 14).) Bossart then filed a
response through counsel.

1 based on the exchange rate as of February 17, 2016. (Resp. (Dkt. # 16) at 2.)³ Howden
2 then filed a reply in which it did not oppose conversion to pounds, but disagreed with
3 calculating the exchange rate as of February 17, 2016. (Reply (Dkt. # 17) at 1 (“The only
4 issue Howden disputes in connection with Bossart’s March 21 [response] relates to
5 Bossart’s request that the [c]ourt apply the exchange rate from February 17, 2016,
6 pursuant to RCW 6.44.080.”).) Howden argues that RCW 6.44.080 does not control the
7 exchange rate because it only applies to “distribution proceedings,” and asks the court to
8 calculate the conversion to pounds using the exchange rate on the date of the Award: July
9 6, 2015. (*Id.* at 2.)

10 III. ANALYSIS

11 The court will enter judgment in the amounts and currencies stated in the Award
12 because federal law controls, federal law allows judgment in foreign currency, federal
13 policy weighs strongly against modification of arbitral awards, and the arbitrator in this
14 case had substantive reasons for entering the Award in both dollars and pounds.

15 A. Federal Law Controls

16 Bossart asks the court to convert the entire Award into pounds because “the
17 recognition of [foreign] judgments is governed by applicable state law, even when that
18 recognition is sought in federal court.” (Resp. at 1.) Bossart further claims that “in
19 Washington, foreign judgments are recognized and enforced through the Uniform
20 Foreign Money Claims Act (“UFMCA”) as adopted in RCW 6.40 *et. al.*,” which requires

21
22 ³ Bossart does not oppose entry of judgment on the Award. (*See generally* Resp.)

1 “a foreign money claim judgment or award” to be “filed or indexed in foreign money.”

2 (*Id.* at 1-2.)

3 The court disagrees. Federal law—not state law—governs the enforcement of
4 arbitration awards that fall under the Convention. *See Moses H. Cone Mem’l Hosp. v.*
5 *Mercury Constr. Corp.*, 460 U.S. 1, 23-24, (1983) (“The effect of [9 U.S.C. § 2] is to
6 create a body of federal substantive law of arbitrability, applicable to any arbitration
7 agreement within the coverage of the Act.”). State law is potentially applicable to foreign
8 awards in diversity cases, but not in cases where a federal statute controls. *See, e.g.,*
9 *Nicor Int’l Corp. v. El Paso Corp.*, 318 F. Supp. 2d 1160, 1164 (S.D. Fla. 2004)
10 (applying state law to a foreign judgment in a diversity case that did not fall under the
11 Convention).

12 **B. Judgment in Foreign Currency is Permissible**

13 The Convention and the Ninth Circuit are silent on currency conversion when a
14 court enforces a foreign arbitral award. *See generally* 9 U.S.C. §§ 201-08. Additionally,
15 there is no uniform federal common law rule. However, “there is now no bar to judgment
16 in [foreign] currency” after Congress repealed section 20 of the Coinage Act of 1792.
17 *Matter of Oil Spill by Amoco Cadiz Off Coast of France on Mar. 16, 1978*, 954 F.2d
18 1279, 1328 (7th Cir. 1992); *see also* Coinage Act of 1982, Pub. L. 97-258, 96 Stat. 980
19 (1982). Some jurisdictions expressly favor the entry of judgments in the currency “in
20 which the commercial activity took place” in order to avoid inevitable “fights over
21 conversion dates.” *See, e.g., Matter of Oil Spill*, 954 F.2d at 1328; *Mitsui & Co. v.*
22 *Oceantrawl Corp.*, 906 F. Supp. 202, 204 (S.D.N.Y. 1995) (entering judgment in

1 Japanese yen because doing so “accords with principles of fairness and with the goal of
2 making injured parties whole because it provides them with payment in the currency for
3 which they bargained”).

4 As far back as 1926, the Supreme Court recognized that in some cases courts
5 may enforce obligations in foreign currency without converting to dollars, even if the
6 foreign currency fluctuates between the time the obligation arises and the date of
7 judgment:

8 An obligation in terms of the currency of a country takes the risk of
9 currency fluctuations and whether creditor or debtor profits by the change
10 the law takes no account of it If the debt had been due here and the
11 value of dollars had dropped before suit was brought the plaintiff could
12 recover no more dollars on that account. A foreign debtor should be no
13 worse off.

14 *Die Deutsche Bank Filiale Nurnberg v. Humphrey*, 272 U.S. 517, 519 (1926). The
15 Restatement (Third) of Foreign Relations favors conversion to dollars but still recognizes
16 that judgments may be entered in foreign currency in some circumstances:

17 Courts in the United States ordinarily give judgment on causes of action
18 arising in another state, or denominated in a foreign currency, in United
19 States dollars, but they are not precluded from giving judgment in the
20 currency in which the obligation is denominated or the loss was incurred.

21 Restatement (Third) of Foreign Relations Law of the United States § 823(1) (Am. Law
22 Inst. 1987). In addition, at least one jurisdiction has confirmed an arbitral award in
multiple currencies. *See Waterside Ocean Nav. Co. v. Int’l Nav. Ltd.*, 737 F.2d 150, 151
(2d Cir. 1984) (confirming foreign arbitral award consisting of both dollars and pounds).

1 **C. Federal Policy Disfavors Modification of Arbitral Awards**

2 The Convention and the Ninth Circuit are silent on whether and how a court
3 should convert currency when entering judgment on a foreign arbitral award. *See*
4 *generally* 9 U.S.C. § 201 *et seq.* However, the Ninth Circuit recognizes that judicial
5 review of arbitral awards is extremely limited. *See Kyocera Corp. v. Prudential-Bache*
6 *Trade Servs., Inc.*, 341 F.3d 987, 998 (9th Cir. 2003) (observing that courts have “an
7 extremely limited review authority, a limitation that is designed to preserve due process
8 but not to permit unnecessary public intrusion into private arbitration procedures”);
9 *LaPine Tech. Corp. v. Kyocera Corp.*, 130 F.3d 884, 888 (9th Cir. 1997) (“[I]n the
10 absence of any contractual terms regarding judicial review, a federal court
11 may . . . modify an arbitration award only if that award is ‘completely irrational,’ exhibits
12 a ‘manifest disregard of law,’ or otherwise falls within one of the grounds set forth in 9
13 U.S.C. §§ 10 or 11.”); *Ministry of Def. of the Islamic Republic of Iran v. Gould, Inc.*, 969
14 F.2d 764, 770 (9th Cir. 1992) (“The district court’s[—]and hence this court’s[—]review
15 of a foreign arbitration award is quite circumscribed.”).

16 The court finds that the required deference to arbitrator determinations should
17 extend to decisions about the type of currency in an arbitral award when the arbitrator
18 gives substantive reasons for entering the award in specific currencies. “One could
19 argue, for example, that [an arbitral] award that was split into three separate currencies
20 exhibited the rendering court’s intent that the judgment would be paid in those amounts
21 in the currency so designated.” Ved P. Nanda & David K. Pansius, 3 *Litigation of Int’l*
22 *Disputes in United States Courts* § 19:1 (2016). To reconvert a portion of an arbitral

1 | award would essentially modify portions of the award itself and would be an
2 | “unnecessary public intrusion into private arbitration procedures.” *See Prudential-Bache*,
3 | 341 F.3d at 998.⁴

4 | **D. The Arbitrator Gave Substantive Reasons for Entering the Award in Both**
5 | **Dollars and Pounds**

6 | The arbitrator in this case determined that

7 | any damages awarded to Bossart in relation to commission payments
8 | should be calculated by converting any sums in other currencies into
9 | [United States] [d]ollars at the exchange rate prevailing when the
10 | commission should have been paid to Bossart.

11 | (Award at 29.) According to the arbitrator, Bossart was entitled to payments in United
12 | States dollars because “either Bossart would in fact have been paid in [United States]
13 | [d]ollars or . . . it would have immediately converted any sums received in another
14 | currency into [United States] [d]ollars.” (*Id.*)

15 | The determination to convert pounds to dollars had a substantive impact on the
16 | amount Howden owes Bossart. The arbitrator stated that “Bossart is entitled to damages
17 | to put it into the position it would have been in had the contract been properly
18 | performed.” (*Id.*) The arbitrator went on to make at least eight conversions from pounds

19 | ⁴ The Restatement notes that in limited circumstances “the judgment for the smaller sum
20 | may be converted into the currency of the judgment for the larger sum as of the date of payment
21 | and used as set-off.” Restatement (Third) of Foreign Relations Law § 823 cmt. f. In at least one
22 | case a court converted an award in multiple currencies to United States dollars. *See Cont’l*
Transfert Technique Ltd. v. Fed. Gov’t of Nigeria, 932 F. Supp. 2d 153, 158 (D.D.C. 2013)
(converting portions of an award in British pounds and Nigerian naira into dollars), *aff’d*, 603 F.
App’x 1 (D.C. Cir. 2015). The *Contintental Transfert* court found it necessary to convert the
award to dollars because the naira had depreciated so precipitously that a judgment in naira
would not make the creditor whole. *Id.* In this case, however, neither Howden nor Bossart argue
that conversion is necessary to avoid a similar inequitable outcome. (*See generally* Mot.; Resp.;
Reply.)

1 to dollars using the exchange rates from multiple breach dates. (*Id.* at 41-42.) The
2 arbitrator also converted interest payments to dollars to arrive at the final amount
3 Howden owed Bossart. (*Id.* at 53-54.) If this court converts the Award into a single
4 currency, it risks modifying what amounts to a substantive portion of the Award itself,
5 and may encourage unnecessary conflicts over exchange rates in future cases. The court
6 will not do so here.

7 **E. Interest**

8 Title 28, Section 1961 governs interest on any “money judgment in a civil case
9 recovered in federal district court.” 28 U.S.C. § 1961(a). Parties may waive their right to
10 interest at the federal statutory rate by contract or stipulation. *See Citicorp Real Estate,*
11 *Inc. v. Smith*, 155 F.3d 1097, 1108 (9th Cir. 1998) (“[W]e affirm the district court’s grant
12 of post-judgment interest based on the mutually agreed upon contract rate set forth in the
13 arbitration award.”). An arbitration award that includes a mutually agreed-upon post-
14 judgment interest rate overrides the federal statutory rate. *Id.*; *see also Fidelity Fed.*
15 *Bank, FSB v. Durga Ma Corp.*, 387 F.3d 1021, 1024 (9th Cir. 2004) (affirming
16 application of the federal statutory rate when an arbitration award “contain[ed] no
17 language suggesting that post-judgment interest is part of the award”). In this case, the
18 arbitrator set a five percent per annum interest rate, and stated that interest runs from July
19 7, 2015—the date after the arbitrator entered the Award—until the judgment is paid.
20 (Award at 58-59.) Neither party disputes the interest rate set forth in the Award or asks
21 the court to apply the federal statutory rate. (*See Mot.* at 2; *Resp.* at 3.) Therefore, the
22 court applies the interest rate set forth in the Award.

1 **IV. CONCLUSION**

2 The court GRANTS Howden's motion for entry of judgment (Dkt. # 11). The
3 court will enter judgment in the following amounts: for Bossart and against Howden for
4 \$165,773.87; for Howden and against Bossart for £385,026.81; for Howden and against
5 Bossart for \$500.00; and five percent per annum interest on all amounts, calculated daily
6 from July 7, 2015, until the judgment is paid.

7 Dated this 5th day of May.

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10 JAMES L. ROBART
11 United States District Judge
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