

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Ji'AN GROUP CO., LTD,

Petitioner,

v.

ROCK-TENN CP, LLC,

Respondent.

CIVIL ACTION FILE

NO. 1:15-CV-3258-MHC

ORDER

This case comes before the Court on Petitioner Ji'An Group Co., Ltd.'s ("Ji'An") Petition to Confirm Arbitration Award [Doc. 1] ("Petition").

I. BACKGROUND

This is an action to confirm an arbitral award granted in China to Ji'An, a Chinese corporation, against a United States corporation, Rock-Tenn CP, LLC, pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention"). 9 U.S.C. § 201, *et seq.* (2012). The underlying dispute arose in December 2011 when Ji'An asserts that

Respondent Rock-Tenn CP, LLC, n/k/a WestRock CP, LLC (“WestRock”)¹ failed to deliver materials to Ji’An in accordance with four contracts. Pet. ¶ 6; Pet’r’s Br. in Supp. of Pet. to Confirm Arbitration Award [Doc. 11] (“Pet’r’s Br.”) at 7-8. On June 30, 2012, Ji’An contends that it filed an arbitration request with the China International Economic and Trade Arbitration Commission (“CIETAC”). Pet. ¶ 7. WestRock asserts that Ji’An did not send it a copy of the arbitration request or otherwise provide notice of the proceedings. Lynch Aff. ¶¶ 6-8.

Ji’An contends that an arbitration hearing was held in China on December 17, 2012, after the parties were informed of the hearing date. Pet. ¶ 8. It asserts that CIETAC informed the parties of the date, time, and location of the arbitration hearing on or about October 18, 2012, and separately notified the parties that it appointed the sole arbitrator for the case from the panel of arbitrators because the parties did not jointly choose an arbitrator. Id. ¶¶ 8-9. Although WestRock and its agents did not appear, the arbitrator held the hearing and took oral testimony and evidence from Ji’An. Id. ¶ 10. Because WestRock did not appear at the hearing or submit any statement or evidence, CIETAC requested that WestRock submit any defenses or evidence in writing and encouraged WestRock to apply for another

¹ See Aff. of Richard Lynch, attached as Ex. to Resp’t’s Answer [Doc. 3-1] (“Lynch Aff.”) ¶ 2.

hearing before the arbitrator reached a decision. Id. ¶¶ 11-12. After WestRock failed to do so, the arbitrator issued the award on February 4, 2013 in favor of Ji'An. Id. ¶ 13. On September 16, 2015, Ji'An filed this action to confirm the award. WestRock asserts that service of this action was the first time it received notice of any arbitration. Lynch Aff. ¶ 6.

Ji'An has presented documents purporting to be from CIETAC, along with an alleged English translated copy. See CIETAC Documents, attached as Exs. 1-5 to Pet'r's Br. [Docs. 11-3 through 11-7]. However, Ji'An offers no evidence that the documents or translations were sent to WestRock, and WestRock asserts it never received them. Ji'An attached similar (but distinct) translations of these documents to the Petition that were ostensibly translated by "Yang Cao" in 2015 (more than two years after the hearing and award). Translations, attached as Exs. 2-6 to Pet. [Docs. 1-2 through 1-6]. Further, although certain translations state that documents are enclosed, no enclosures are included with the translations attached to the Petition. See, e.g., [Docs. 1-2, 1-4]. WestRock asserts that it still has not received a copy of the Request for Arbitration. Lynch Aff. ¶¶ 6-8. WestRock states it did not receive any arbitration correspondence from CIETAC and first saw these documents when Ji'An served the Petition in this case. Id.

II. LEGAL STANDARD

The New York Convention is a multilateral treaty that governs foreign arbitral awards. Its purpose is “to encourage the recognition and enforcement of international arbitral awards, to relieve congestion in the courts and to provide parties with an alternative method for dispute resolution that is speedier and less costly than litigation.” See Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH, 141 F.3d 1434, 1440 (11th Cir. 1998) (internal citations and punctuation omitted). The New York Convention provides that a “court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.” 9 U.S.C. § 207; see also Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A., 533 F.3d 1349, 1357 (11th Cir. 2008) (citing 9 U.S.C. § 207). The New York Convention is incorporated into federal law by the Federal Arbitration Act (“FAA”),² which governs the enforcement of arbitration agreements, and of arbitral awards made

² This Court uses “the FAA” to refer to 9 U.S.C. §§ 1-16 and “the New York Convention” to refer to 9 U.S.C. §§ 201-08. As the Eleventh Circuit has noted, “[a]lthough courts often refer to the entirety of Title 9 as the Federal Arbitration Act, this Court has differentiated between Chapter 1 and Chapter 2 because the terms of the two chapters call for such differentiation.” Escobar v. Celebration Cruise Operator, Inc., 805 F.3d 1279, 1283 (11th Cir. 2015), cert. denied, 136 S. Ct. 1158 (2016).

pursuant to such agreements, in federal and state courts. See Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265, 269-73 (1995). The United States and China both are parties to the New York Convention. The New York Convention is required to be enforced in United States courts. See 9 U.S.C. § 201.

Article V of the New York Convention provides seven defenses to the recognition and enforcement of an arbitral award: (1) the parties to the agreement were under some incapacity or the agreement is not valid under the laws the parties have subjected it to; (2) the party against whom the award was invoked did not receive proper notice; (3) the award contains decisions on matters outside the scope of the arbitration agreement; (4) the composition of the arbitral authority or the arbitral procedure was not in line with the agreement of the parties or was not in line with the law under which the award was made; (5) the award is not binding on the parties, or it has been set aside by a competent authority in the country where the award was made; (6) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; and (7) enforcement of the award would be contrary to the public policy of that country. New York Convention, Article V. The party opposing confirmation bears the burden of proving that one of the seven defenses set forth in the New York Convention applies. Indust. Risk Insurers, 141 F.3d at 1442.

The New York Convention also imposes certain conditions upon the jurisdiction of a district court in an action to confirm an award. Specifically, the party applying for confirmation must, at the time of the application, supply the Court with: (1) an authenticated original or a duly certified copy of the arbitration award; (2) the original or duly certified copy of the original agreement between the parties; and (3) a certified translation of documents that are not made in “the official language of the country in which the award is relied upon.” New York Convention, Article IV.

III. DISCUSSION

WestRock asserts that the award is not enforceable for at least three reasons: (i) it did not receive notice of the arbitration; (ii) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or the law of the country where the arbitration took place; and (iii) Ji’An has failed to satisfy mandatory jurisdictional conditions necessary for confirmation of an arbitration award. Resp’t’s Resp. to Pet’r’s Pet. to Confirm Arbitration Award [Doc. 13] (“Resp’t’s Resp.”).

A. Lack of Notice

WestRock contends that it never received notice of the arbitration proceedings. Resp’t’s Resp. at 5-7. Article V(1)(b) of the New York Convention

provides that recognition and enforcement of an award may be refused when “[t]he party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present [its] case.” New York Convention, Article V(1)(b). An Article V(1)(b) “defense basically corresponds to the due process defense that a party was not given ‘the opportunity to be heard at a meaningful time and in a meaningful manner.’” Generica, Ltd. v. Pharm. Basics, Inc., 125 F.3d 1123, 1129 (7th Cir. 1997) (quoting Mathews v. Eldridge, 424 U.S. 319, 333 (1976)). Due process required that WestRock have notice reasonably calculated to apprise it of the pending arbitration. See Generica, 125 F.3d at 1129-30 (stating that adequate notice is one of the minimal requirements of fairness: “[A]n arbitral award should be denied or vacated if the party challenging the award proves that he was not given a meaningful opportunity to be heard as our due process jurisprudence defines it.”); Jiangsu v. Changlong Chemicals, Co. v. Burlington Bro-Med Scientific Corp., 399 F. Supp. 2d 165, 168 (stating that “[t]o comport with due process parties to an arbitration award must be given notice reasonably calculated to inform them of the proceedings and an opportunity to be heard.”) (citation omitted).

Here, the arbitration allegedly occurred in a country and language that are foreign to WestRock. Ji'An asserts that the documents from CIETAC, English translations, and mailing receipts provided sufficient notice to WestRock. Pet'r's Br. at 19-20; CIETAC Documents. However, there is no evidence that WestRock received any notice or correspondence about the proceedings and WestRock asserts that it did not learn of the arbitration until it was served with a copy of the petition in this action. With respect to the letters and purported award relied upon by Ji'An, there is no signature in the "accepted by" box, the dates are not legible, the documents are unauthenticated, Ji'An has not explained when or how it obtained the unsigned documents, and the alleged translations do not reflect when or by whom they were translated. CIETAC Documents. The documents presented by Ji'An fail to demonstrate Ji'An provided WestRock notice of the arbitration. Id. In fact, the documents state that the translations attached to the Petition were performed in 2015 and, thus, could not have been sent to WestRock prior to a 2013 award.

The Court agrees with WestRock, and finds the petition must be denied. See CEEG (Shanghai) Solar Sci. & Tech. Co., Ltd. v. Lumos, LLC, No. 14-CV-03118-WYD-MEH, 2015 WL 3457853, at *5 (D. Co. May 29, 2015), aff'd, 2016 WL 3909579 (10th Cir. July 19, 2016) (refusing to enforce CIETAC arbitration award

because the “circumstances do not generate an inference that [defendant] had actual knowledge that [petitioner] had commenced an arbitration proceeding in China.”); Qingdao Free Trade Zone Genius Int’l Trading Co., Ltd. v. P & S Int’l, Inc., No. 08-1292-HU, 2009 WL 2997184, at *5 (D. Or. Sept. 16, 2009) (denying enforcement of award because, despite defendants’ admitted receipt of arbitration documents in Chinese and some documents in English, the defendant did not receive adequate notice of the arbitration to satisfy due process); Sesostris, S.A.E. v. Transportes Navales, S.A., 727 F. Supp. 737, 742-43 (D. Mass. 1989) (finding a party with no notice of arbitration proceeding until after it was completed was not bound by the outcome of the proceeding).

B. Selection of Arbitrator and Arbitration Procedure

WestRock further asserts that Ji’An failed to follow the requirements for selecting the arbitrator and arbitration procedure. Resp’t’s Resp. at 12-13. WestRock contends that, because it was not given proper notice of the arbitration, it was “deprived of the opportunity to meaningfully participate in the selection of the arbitrator[.]” See CEEG Solar Sci., 2015 WL 3457853, at *15. In fact, the purported correspondence from CIETAC attached to Ji’An’s brief as Exhibit 1 (which is addressed to Ji’An, not WestRock) states “You [Plaintiff] are required to contact directly with the Respondent [WestRock] to jointly appoint or entrust the


Chairman of our Commission to appoint a sole arbitrator from the Panel of Arbitrators.” Correspondence, attached as Ex. 1 to Pet’r’s Br. [Doc. 11-3] at 2. WestRock asserts that Ji’An never contacted it and Ji’An offers no evidence of any communication to WestRock about the arbitration. The Court agrees that WestRock’s inability to participate in the selection of the arbitrator is an additional reason to deny Ji’An’s petition.³

IV. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that Petitioner Ji’An Group Co., Ltd.’s Petition to Confirm Arbitration Award [Doc. 1] is **DENIED**.

The Clerk is **DIRECTED** to close this case.

IT IS SO ORDERED this 21st day of November, 2016.



MARK H. COHEN
United States District Judge

³ Having concluded Ji’An’s Petition must be denied, the Court need not address WestRock’s additional arguments that the award failed to comply with the requirement that it be issued within three months after appointment of the arbitrator, or that Ji’An has not satisfied the New York Convention’s requirements to supply the original or a duly-certified copy of the arbitration agreement and award.