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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HYDRO-BLOK USA LLC, et al.,
Plaintiffs,

v.

WEDI CORP.,

Defendant.

C15-671 TSZ

ORDER

WEDI CORP.,

Plaintiff,

v.

BRIAN WRIGHT, et al.,

Defendants.

THIS MATTER comes before the Court on a motion, docket no. 101, brought by Brian Wright and Sound Product Sales L.L.C. (collectively, “Wright”), to correct or modify the arbitral award issued on June 23, 2017, docket no. 101-3. Having reviewed all papers filed in support of, and in opposition to, the motion, the Court GRANTS the motion in part and DENIES the motion in part for the following reasons.

1 **Discussion**

2 Pursuant to agreements between wedi Corp. and Wright, docket nos. 101-1 &
3 101-2, the parties were directed to arbitrate wedi's breach of contract, breach of fiduciary
4 duty, civil conspiracy, and unjust enrichment claims against Wright. See Order (docket
5 no. 26); see also Am. Compl. at Counts I-IV (docket no. 17). The parties also arbitrated
6 wedi's allegation that Wright had violated Washington's Uniform Trade Secrets Act,
7 which had been pleaded as a counterclaim in this matter. See 1st Am. Counterclaims at
8 Count VII (docket no. 64). The arbitrator found against wedi and in favor of Wright on
9 all claims other than breach of contract; on the contract claim, the arbitrator awarded to
10 wedi only nominal damages of \$1.00. See Ex. C to Wright's Mot. (docket no. 101-3).
11 The arbitrator denied wedi's request for attorneys' fees, concluding that the "fair and just
12 result is to leave the parties where they stand." Id. (docket no. 101-3 at 17).

13 The arbitrator further indicated that, although "Wright alluded to the possibility of
14 seeking the recovery of his attorneys' fees against wedi," he "waived making that request
15 at the hearing or in his post-hearing brief." Id. (docket no. 101-3 at 5). Wright asks that
16 the Court strike this passage from the arbitral award pursuant to Federal Arbitration Act
17 ("FAA"), which authorizes the Court to modify or correct an award when it "is imperfect
18 in matter of form not affecting the merits of the controversy." 9 U.S.C. § 11(c); see also
19 Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co., 529 U.S. 193 (2000) (FAA's venue
20 provisions are permissive, allowing a motion to modify to be brought in either the district
21 in which the award was made or any district proper under the general venue statute).

22 According to Wright, the reason that he did not address the issue of attorneys' fees during
23

1 the hearing or in his post-hearing brief was because the arbitrator instructed the parties to
2 wait until after the award issued to submit a fee petition. See Tr. (Vol. X) at 2547 (docket
3 no. 101-4 at 6); see also Ex. E to Wright's Mot. (docket no. 101-5).

4 The Court agrees that Wright cannot be viewed as having waived the ability to
5 pursue attorneys' fees relating to the arbitration proceedings. The arbitrator, however,
6 also made clear in other provisions of the award that attorneys' fees and costs, including
7 the expenses associated with the arbitration, would not be awarded to either side, as a
8 matter of fairness. See Ex. C to Wright's Mot. (docket no. 101-3 at 17-18). The parties'
9 agreement delegates to the arbitrator the authority to decide whether a party is entitled to
10 attorneys' fees, and it indicates that the parties shall bear their own expenses incurred in
11 connection with the arbitration unless otherwise determined by the arbitrator. See Exs. A
12 & B to Wright's Mot. (docket nos. 101-1 & 101-2). Thus, the Court will modify the
13 award to omit the last sentence of the Background section, see docket no. 101-3 at 5,
14 lines 10-13, because such language is inconsistent with the arbitrator's direction to the
15 parties and renders the award "imperfect" in form, but the Court leaves unchanged the
16 arbitrator's decision on the merits of the attorneys' fees issue. Contrary to the suggestion
17 in his motion, Wright may not seek reimbursement of the legal costs of arbitration via
18 subsequent motion to this Court.

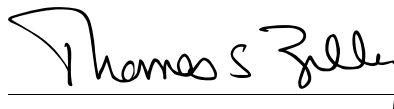
19 **Conclusion**

20 For the foregoing reasons, Wright's motion to correct or modify arbitral award,
21 docket no. 101, is GRANTED in part and DENIED in part. The parties are DIRECTED
22 to file a Joint Status Report within twenty-one (21) days of the date of this Order
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1 indicating what, if any issues, remain for trial in this matter. The Clerk is DIRECTED to
2 send a copy of this Order to all counsel of record.

3 IT IS SO ORDERED.

4 DATED this 2nd day of October, 2017.

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6 Thomas S. Zilly
7 United States District Judge

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