

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Nippon Yusen Kaisha (N.Y.K. Line),

Petitioner,

16 Civ. 6153 (DAB)

MEMORANDUM & ORDER

-against-

Sea Central Shipping, Inc.,

Respondent.

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DEBORAH A. BATTIS, United States District Judge.

On September 18, 2017, Petitioner Nippon Yusen Kaisha (NYK Line) ("Petitioner") filed a Petition to Confirm an Arbitration Award against Respondent Sea Central Shipping, Inc. pursuant to 9 U.S.C. § 207 and/or 9 U.S.C. § 9. (ECF No. 37.) This case arises from a dispute under a service contract between an ocean carrier and shipping company over unpaid charges. Petitioner seeks confirmation of an Arbitral Award of \$2,097,987.41 plus additional interest. For the following reason, the Petition is AFFIRMED.

I. BACKGROUND

The relevant facts as explained by the Arbitrator are as follows:

NYK Line and Sea Central Shipping entered into a RO/RO [Roll-on/Roll-off] Service Contract effective 1 February 2011 through 31 December 2012 and subsequently extended it, both in writing and in practice. The terms of the Service Contract required NYK Line to transport on Sea Central Line's behalf and direction, various vehicles and

other commodities by sea from the Port of Tampa, Florida to various ports in Guatemala, Honduras, Costa Rica and Panama on vessels owned or chartered by NYK Line in consideration for certain agreed freight charges. NYK Line issued a memo bill of lading to Sea Central Shipping for the shipments carried under the Service Contract. NYK Line also issued invoices to Sea Central Shipping for the corresponding ocean freight charges. The particular shipments and corresponding invoices that are the subject matter of this arbitration cover the time period November 2011 through February 2013. Copies of the invoices and bills of lading were attached to the submissions and none of them were disputed by Sea Central Shipping. The total amount of the invoices subject to the Service Contract amount to \$2,099,849.74. Partial payments in various amounts were made by Sea Central Shipping in the total amount of \$175,274.11. There is a balance of freight in the amount of \$1,924,575.63 outstanding that has not been disputed by Sea Central Shipping.

(Ex. 3 to Decl. of Randolph H. Donatelli, Decision and Final Award of Arbitrator Molly McCafferty ("Arb. Decision"), ECF No. 38 at 1.)

Petitioner filed the instant case on August 3, 2016 seeking to compel arbitration. Petitioner was granted Default Judgment in an Order of May 10, 2017, which directed Respondent to submit to arbitration. Both parties appeared before the arbitrator Molly McCafferty and fully submitted their arbitration pleadings on August 1, 2017.

On August 31, 2017, Ms. McCafferty issued her final decision and award. She found no dispute in the unpaid carrier charges of \$1,924,575.63. She rejected as unsubstantiated Respondent's contention that Petitioner's claim for damages was somehow time

barred. She also awarded interest up to the date of her decision (\$127,997.60), reasonable attorneys' fees and costs (\$40,764.18),¹ and arbitrator's fees which NYK Line paid on Sea Central's behalf (\$4,650.00). (Arb. Decision 1-6). The total is \$2,097,987.41.²

Petitioner now seeks confirmation of Ms. McCafferty's award and judgment against Respondent in the amount of \$2,097,987.41 plus interest. Petitioner served Respondent via the Florida Secretary of State and via email on May 23, 2017. (ECF No. 36.) Respondent has not responded to the Petition.

II. Discussion

A. Federal Arbitration Act

Under the Federal Arbitration Act, the Court must affirm the award "unless the award is vacated, modified." 9 U.S.C. § 9.

"Normally, confirmation of an arbitration award is 'a summary proceeding that merely makes what is already a final arbitration award a judgment of the court.'" D.H. Blair & Co. v. Gottdiener, 462 F.3d 95, 110 (2d Cir. 2006) (quoting Florasynth, Inc. v. Pickholz, 750 F.2d 171, 176 (2d Cir. 1984)). "Arbitration awards

¹ Petitioner's counsel submitted detailed invoices of the work performed to the arbitrator. (Arb. Decision 5.)

² The Court notes an error in Ms. McCafferty's Arbitration Decision on page 5. After correctly calculating the total award to be \$2,097,987.41, Ms. McCafferty restates the total award incorrectly in the final paragraph. (Arb. Decision 5 ("Interest at the rate of 4 percent per annum, shall resume accruing on the full amount of the award (\$2,085,939,49) . . . ") (emphasis added.)) Email correspondence between the Court and the Parties shows that the restated award amount is indeed an error. (Email Correspondence between the Petitioner and the Court, ECF No. 40-1.) The total award is \$2,097,987.41.

are subject to very limited review," Folkways Music Publishers, Inc. v. Weiss, 989 F.2d 108, 111 (2d Cir. 1993), with the party moving to vacate the award carrying the burden of proof. D.H. Blair, 462 F.3d at 110. "The arbitrator's rationale for an award need not be explained, and the award should be confirmed if a ground for the arbitrator's decision can be inferred from the facts of the case. Only a barely colorable justification for the outcome reached by the arbitrators is necessary to confirm the award." Id.; see also Trs. of N.Y.C. Dist. Council of Carpenters Pension Fund v. Dejlil Sys., Inc., No. 12 Civ. 005 (JMF), 2012 WL 3744802, at *3 (S.D.N.Y. Aug. 29, 2012) ("Where . . . there is no indication that the arbitration decision was made arbitrarily, exceeded the arbitrator's jurisdiction, or otherwise was contrary to law, a court must confirm the award upon the timely application of any party.").

B. Legal Standard for Summary Judgment Motion

An unanswered petition to confirm an arbitration award is to be treated "as an unopposed motion for summary judgment." D.H. Blair, 462 F.3d at 110.

A court should grant summary judgment where there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Genuine issues of material fact cannot be created by conclusory

allegations. Victor v. Milicevic, 361 F. App'x 212, 214 (2d Cir. 2010). Summary judgment is appropriate only when, after drawing all reasonable inferences in favor of a nonmovant, no reasonable juror could find in favor of that party. Melendez v. Mitchell, 394 F. App'x 739, 740 (2d Cir. 2010).

In assessing when summary judgment should be granted, "[t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Jeffreys v. City of New York, 426 F.3d 549, 553 (2d Cir. 2005) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). The nonmovant may not rely upon speculation or conjecture to overcome a motion for summary judgment. Burgess v. Fairport Cent. Sch. Dist., 371 F. App'x 140, 141 (2d Cir. 2010). Instead, when the moving party has documented particular facts in the record, "the opposing party must come forward with specific evidence demonstrating the existence of a genuine dispute of material fact." F.D.I.C. v. Great Am. Ins. Co., 607 F.3d 288, 292 (2d Cir. 2010). Establishing such evidence requires going beyond the allegations of the pleadings, as the moment has arrived "to put up or shut up." Weinstock v. Columbia Univ., 224 F.3d 33, 41 (2d Cir. 2000) (quoting Fleming James, Jr. & Geoffrey C. Hazard, Jr., Civil Procedure 150 (2d ed. 1977)).

C. Confirmation of the Arbitration Award

The Court has conducted a limited review of RO/RO Service Contract and the Arbitration Award. The arbitrator was acting within the scope of her authority, as granted to her by the agreement. (See Ex. 1 to Decl. of Randolph H. Donatelli, RO/RO Service Contract ("Contract"), ECF No. 38 ¶ 12 ("Any dispute of conflict between the parties arising out of this Agreement or its interpretation shall be resolved by arbitration in New York, New York, in accordance with the Federal Arbitration Act, 9 U.S.C. [§] 1 et seq., as amended.")) The Arbitrator evaluated both Petitioner's and Respondent's positions, ultimately concluding that Respondent never disputed the amount of unpaid charges at hand. (Arb. Decision 3.) The Arbitrator also correctly determined that there was no evidence to support Respondent's contention that Petitioner's claims were somehow time barred. (Id. at 3-4.) Accordingly, there is much more than a "barely colorable justification" for the Arbitrator's conclusions. See D.H. Blair, 462 F.3d at 110.

Finally, no grounds exist under 9 U.S.C. § 207³ or 9 U.S.C. § 10⁴ to vacate the award, such as incapacity of the parties, corruption of the arbitrator, or improper notice. Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc., 126 F.3d 15, 19 (2d Cir. 1997). Thus, based on the record provided, together with the appropriate narrow level of review, the Court finds that there is no disputed material issue of fact and confirms the arbitration award.

³ 9 U.S.C. § 207 empowers a Court to delay or refuse enforcement of an award for the reasons specified in Article V(1) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Those reasons are:

- (a) The parties to the agreement ... were ... under some incapacity, or the said agreement is not valid under the law ...; or
- (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings ...; or
- (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration ...; or
- (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties ...; or
- (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc., 126 F.3d 15, 19 (2d Cir. 1997)

⁴ 9 U.S.C. § 10 empowers a Court to vacate an award for the following reasons:

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

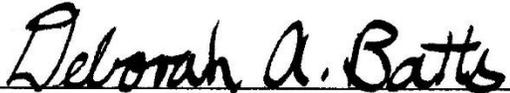
III. CONCLUSION

For the foregoing reasons, the Petition to Confirm the Arbitration Award is GRANTED. The Clerk of Court is directed to enter judgment in favor of Petitioner and against Respondent in the amount of \$2,097,987.41.

Petitioner shall file an affidavit within 10 days of this Order calculating the total interest accrued from the 30th day of date of the arbitration award through Friday, February 22, 2019.

SO ORDERED.

DATED: New York, New York
February 12, 2019



Deborah A. Batts
United States District Judge