

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:21-cv-133-MOC-DCK**

ZAKLADY FARMACEUTYCYNE)
POLPHARMA, S.A.,)
))
Plaintiff,)
))
vs.)
))
KARTHA PHARMACEUTICALS, INC.,)
))
Defendant.)
_____)

ORDER

This matter is before the Court on a Motion to Enforce Judgment Arbitration Award and for Dismissal with Prejudice, filed by Plaintiff Zaklady Farmaceutycyne Polpharma, S.A. (“Polpharma”). (Doc. No. 18). Defendant Kartha Pharmaceuticals, Inc. has filed a brief in response, and Polpharma has filed a Reply. (Doc. Nos. 23, 24). Furthermore, the Court held a hearing on the motion on June 22, 2023. For the reasons stated herein, the Court **GRANTS** the pending motion.

I. PROCEDURAL BACKGROUND

Defendant Kartha Pharmaceuticals, Inc. was awarded an Abbreviated New Drug Application from the United States Food and Drug Administration for the drug Baclofen in three different strengths (20 mg, 10 mg, and 5 mg) on March 5, 2021. Just 26 days later, on March 31, 2021, one day after its customer Rubicon Research Private Limited filed its Verified Complaint and Motion for Preliminary Injunction against Kartha, (Doc. No. 1 in Case No. 3:21-cv-129), Polpharma filed its Complaint “in aid of arbitration” and seeking a preliminary injunction against

Kartha. (Doc. No. 1 in Case No. 3:21-cv-133). Essentially, Polpharma has accused Kartha of breaching a Consulting Services agreement between the parties and stealing Rubicon's trade secrets related to the drug Baclofen.

Kartha filed its Answer and a Counterclaim against Polpharma on April 23, 2021 (Doc. No. 6 in Case No. 3:21-cv-00133). Polpharma moved to compel Kartha to arbitrate its Counterclaim on May 14, 2021, and Kartha opposed that Motion on May 28, 2021. (Doc. Nos. 27, 28). This Court ordered the parties to arbitrate their claims in accordance with the arbitration clause in the parties Consulting Services Agreement by Order dated September 16, 2021. (Doc. No. 79). The Court maintained jurisdiction for purposes of hearing Polpharma's Motion for Preliminary Injunction and a hearing on that Motion was held on October 27, 2021. The Court has not issued an order either granting or denying Polpharma's Motion for Preliminary Injunction as of the date of this submission. Rubicon ultimately withdrew its Motion for Preliminary Injunction, and its case was dismissed by order of the Court on January 28, 2022. (Doc. No. 114).

Polpharma and Kartha proceeded through the Swiss Arbitration process, and a hearing was conducted in Switzerland between August 22 and August 25, 2022. Post-arbitration briefing was submitted and on December 20, 2022, the Sole Arbitrator issued his Final Award. (Doc. No. 19). In a 90-page Final Award, the Sole Arbitrator thoroughly reviewed the arguments of both parties and the evidence presented both at the arbitration hearing, the pre-hearing briefing, and the post-hearing briefing and rendered a reasoned and complete decision. The Sole Arbitrator denied Polpharma's claims for a permanent injunction, denied Kartha's counterclaim for breach of contract, and awarded costs and fees respectively based upon the outcome of the claims asserted. Pursuant to the Consulting Services Agreement between Kartha and Polpharma at

paragraph 14, and Article 32 of the Swiss Rules of International Arbitration, the Final Award is final and binding on the parties.

Under the Swiss Arbitration Centre's Swiss Rules of International Arbitration (2012) and Swiss Arbitration Law (Chapter 12 of the Swiss Private International Law Act of 1992), the parties have 30 days from receipt of the award to request from the arbitral tribunal an interpretation of the award, correction of any errors in the award, or request additional award (Swiss Rules of International Arbitration, Articles 35, 36, and 37) or to apply to the Swiss Supreme Court to set aside the award (Swiss Private International Law Act, Article 190(4)). Neither Polpharma nor Kartha made any requests within 30 days of the receipt of the Final Award. Kartha now seeks to have the Court confirm the Final Award and seeks dismissal of Polpharma's Complaint with prejudice.

II. DISCUSSION

The Federal Arbitration Act Chapter 2, 9 U.S.C. § 207, provides:

Within three years of an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The 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.

“The Fourth Circuit has clarified that judicial review of an arbitration award is ‘among the narrowest known at law.’” AO Technsnabexport v. Globe Nuclear Servs. & Supply GNSS, Ltd., 404 Fed. Appx. 793, 797 (4th Cir. 2010). “This narrow review equally applies to arbitration awards under the Convention.” Blackwater Sec. Consulting, LLC v. Nordan, No. 2:06-CV-49-F, 2011 WL 237840, at *11 (E.D.N.C. Jan. 21, 2011) (citations omitted).

The Federal Arbitration Act codifies the New York Convention at 9 U.S.C. §§ 201-208.

“Pursuant to the Convention, a district court ‘shall confirm the [arbitral] award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.’” Chevron Corp v. Republic of Ecuador, 949 F. Supp. 2d 57, 64 (D.D.C. 2013), 9 U.S.C. § 207 (emphasis added); Blackwater Sec. Consulting, LLC v. Nordan, No. 2:06-CV-49-F, 2011 WL 237840, at *11 (E.D.N.C. Jan. 21, 2011) (stating that “a district court may refuse to confirm an award under Chapter 2 only if one of the seven grounds for refusal specified in the Convention is found to be applicable”). “[T]he FAA affords the district court little discretion in refusing or deferring enforcement of foreign arbitral awards.” Chevron Corp, 949 F. Supp. at 64. “Because ‘the New York Convention provides only several narrow circumstances when a court may deny confirmation of an arbitral award, confirmation proceedings are generally summary in nature.’” Id.

Here, Polpharma cites to no authority that the arbitral award itself renders the district court without jurisdiction to confirm or enforce the Final Award. Indeed, Polpharma’s position contradicts the New York Convention, which gives the district court of the United States original jurisdiction to confirm or enforce foreign arbitral awards and requires a district court to enforce an arbitral award upon request of any party. 9 U.S.C. § 203 and § 207. None of the grounds for refusing to confirm and enforce the Final Award apply to this case. Moreover, Polpharma has no claims pending before this Court other than its request for a preliminary injunction, which has become moot with the Final Award, and therefore a dismissal with prejudice is appropriate.¹ This

¹ To the extent that Polpharma has argued that the decision of the arbitrator has resulted in Kartha’s lack of standing to bring its motion to enforce the arbitration award, or that this Court somehow lacks jurisdiction to affirm the award, the Court disagrees. The standing of a party—not the claim—controls the issue of standing. White Tail Park, Inc. v. Stroube, 413 F.3d 451, 460 (4th Cir. 2005) (“The standing doctrine, of course, depends not upon the merits, . . . but on ‘whether the plaintiff is the proper party to bring the suit.’”) (citation omitted).

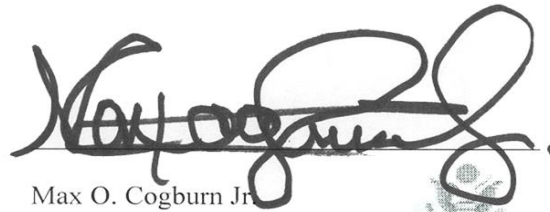
Court confirms the Final Award of the Sole Arbitrator and dismisses Polpharma's case with prejudice.²

III. CONCLUSION

For the reasons stated herein, the Motion to Enforce Judgment Arbitration Award, (Doc. No. 18), is **GRANTED**, and this action is dismissed with prejudice.

IT IS SO ORDERED.

Signed: July 14, 2023



Max O. Cogburn Jr.
United States District Judge

² The Court makes no findings at this time as to the attorney fees issue contested by the parties. This Order merely serves to affirm the arbitrator's award and to dismiss the action.