UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JENLOR INTERNATIONAL LLC,

Petitioner,

v.

AGRIBUSINESS UNITED DMCC,

Respondent.

16 Civ. 1818 (RMB) (SN)

ORDER

I. Background

On March 10, 2016, Jenlor International LLC ("Jenlor" or "Petitioner") filed a petition ("Petition") to confirm a February 5, 2016 arbitration award in the amount of $210,944.74 (which amount includes $46,250 for legal fees and costs) ("Arbitration Award"), pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 9 and 207 et seq., against Agribusiness United DMCC, a foreign business entity with an address in Dubai and which is qualified to do business in New York ("Agribusiness" or "Respondent"). (Petition, dated Mar. 10, 2016 ("Pet."). at 2, 6.)

According to the Petition and the Arbitration Award, Jenlor chartered the M/V IRIS HALO ("Vessel") to Agribusiness, pursuant to a charter party agreement dated April 12, 2014 ("Charter Agreement"), to carry a cargo of corn from River Plate, Argentina to two ports, i.e. Oran, Algeria and Casablanca, Morocco. (Pet. at 2; Pet. Ex. B at 1.) On June 22, 2014, the Vessel arrived at Oran and, by July 3, 2014, the Vessel discharged "all of the corn destined for Oran." (Pet. at 3; Pet. Ex. B at 4.) The cargo receivers at Oran then "denied the Vessel clearance to sail from the port," complaining of an alleged shortfall of corn. (Pet. at 3; Pet. Ex. B at 4.) On July 4, 2014, the Vessel completed the discharge of "extra" corn and was cleared to sail. (Pet. at 3; Pet. Ex. B at 4.) On July 5, 2014, the Vessel arrived in Casablanca, where "again an alleged shortage of corn was detected . . . equal to the extra amount of corn discharged at

Oran." (Pet. at 3; Pet. Ex. B at 4.) Disputes arose between Jenlor and Agribusiness over costs and expenses related to the Vessel's delays at Oran and Casablanca and the shortage of corn at Casablanca. (Pet. at 2-4; Pet. Ex. B at 2.)

On November 24, 2014, pursuant to the Charter Agreement, Jenlor and Agribusiness proceeded to arbitration. (Pet. at 4; Pet. Ex. B at 2.) On August 5, 2015, an arbitration panel of three members held a one-day hearing, and post-hearing written submissions were filed by November 4, 2015. (Pet. at 4; Pet. Ex. B at 2.) Both sides were represented by counsel. (Pet. at 1, 4.) On February 5, 2016, the arbitration panel issued its decision, concluding, among other things, that Agribusiness, not Jenlor, was "most accountable for the events at Oran and the resulting short outturn [i.e. cargo shortage] at Casablanca." (Pet. Ex. B at 6-7.) Agribusiness has failed to satisfy the Arbitration Award, which was to be paid to Jenlor within thirty days of February 5, 2016. (Id. at 9; Pet. at 6.)

On March 17, 2016, Jenlor submitted a motion, and accompanying brief, in support of its Petition to confirm the Arbitration Award, requesting that judgment be entered in the amount of $210,944.74 "together with interest on the Award, and the costs of these proceedings." (Pet.'s Mot. To Confirm Arbitration Award, dated Mar. 17, 2016, at 6; Pet.'s Mem. of Law in Supp. of Its Mot. To Confirm Arbitration Award, dated Mar. 17, 2016.)

Agribusiness has not responded to the motion or otherwise appeared in this case. (See Minute Entry, dated Mar. 17, 2016.) On April 13, 2016, the SDNY Clerk of Court entered a Certificate of Default, certifying that a copy of the Petition and Summons was served on Agribusiness on March 15, 2016 and that Agribusiness "has not filed an answer or otherwise moved with respect to the Petition." (See Clerk's Certificate of Default, dated Apr. 13, 2016.)

For the reasons set forth below, Jenlor's Petition to confirm the Arbitration Award is granted.

II. Legal Standard

An arbitration "award should be confirmed if a ground for the arbitrator's decision can be inferred from the facts of the case." D.H. Blair & Co., Inc. v. Gottdiener, 462 F.3d 95, 110 (2d Cir. 2006) (internal quotation marks omitted). Under the "heightened standard of deference," the Court's "task is to determine whether the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority." United Bhd. of Carpenters & Joiners of Am. v. Tappan Zee Constructors, LLC, 804 F.3d 270, 275-76 (2d Cir. 2015).

"[G]ranting a default judgment in a confirmation/vacatur proceeding would be generally inappropriate." ISC Holding AG v. Nobel Biocare Fin. AG, 688 F.3d 98, 116 (2d Cir. 2012) (internal quotation marks and brackets omitted). The "judgment the court enters should be based on the record." D.H. Blair & Co., Inc., 462 F.3d at 109. "If the non-movant does not respond, its failure to contest issues not resolved by the record will weigh against it." Id.

III. Analysis

The Court grants the Petition to confirm the Arbitration Award. See Landmark Ventures, Inc. v. InSightec, Ltd., 63 F. Supp. 3d 343, 360 (S.D.N.Y. 2014). The record reflects that the underlying arbitration proceeded in accordance with the parties' Charter Agreement, particularly clause 63. (Pet. Ex. A at 13-14; Pet. Ex. B at 2, 10); see United Bhd. of Carpenters & Joiners of Am., 804 F.3d at 274. Jenlor and Agribusiness each selected an arbitrator and the two arbitrators selected the third arbitrator. (Pet. Ex. A at 13; Pet. Ex. B at 2.) The arbitration was conducted in New York, and a full opportunity was afforded to each party to present its case. (Pet. Ex. A at 14; Pet. Ex. B at 2, 10.) Counsel for the parties submitted main and reply briefs, documentary evidence, and "additional correspondence to the arbitration panel." (Pet. at 4; Pet. Ex. B at 2.) The arbitration panel granted Agribusiness's request for "a formal hearing, to present the

testimony from . . . its Dubai based Operations Manager." (Pet. Ex. B at 2); see New York City Dist. Council of Carpenters v. Ross Sales & Contracting Inc., 2015 WL 150923, at *3 (S.D.N.Y. Jan. 5, 2015).

After giving full consideration to the parties' submissions and testimony at the August 5, 2015 hearing, the arbitration panel properly construed and applied the provisions of the Charter Agreement, including, without limitation, clauses 45B and 62.[1] (Pet. Ex. B at 2, 5-9); see United Bhd. of Carpenters & Joiners of Am., 804 F.3d at 275-76. The arbitration panel also applied the "exculpatory provision" contained in clause 45B of the Charter Agreement and determined that Jenlor was "not responsible for quantity of cargo received" at Oran and Casablanca and that Agribusiness was responsible for the Vessel's delays "all linked" to the cargo shortage. (Pet. Ex. B at 7.) The arbitration panel rejected Agribusiness's attempt to apply clause 62 of the Charter Agreement, which Agribusiness contended showed that the Vessel was not "short loaded." (Id.) The arbitration panel found that there was "persuasive evidence that the claimed shortage was never loaded," that Agribusiness "knew, or should have known," of this fact, and that clause 62 is "subordinate" to other terms of the Charter Agreement. (Id. at 6-7.) See Benihana, Inc. v. Benihana of Tokyo, LLC, 784 F.3d 887, 901 (2d Cir. 2015).

The legal fees portion of the Arbitration Award (i.e. $46,250) is also confirmed. See Landmark Ventures, Inc., 63 F. Supp. 3d at 357. The Charter Agreement provided that the "arbitrators may grant any relief which they, or a majority of them, deem just and equitable and within the scope of the agreement of the parties, including but not limited to . . . a reasonable allowance for attorney's fees." (Pet. Ex. A at 14.) "Accordingly, the parties' contract provides

[1] Clause 45B of the Charter Agreement states: "Owners [Jenlor] are not to be responsible for quantity of cargo received by individual receivers but only to ensure that all cargo loaded on board vessel is discharged." (Pet. Ex. A at 10; Pet. Ex. B at 5). Clause 62 states: "Cargo quantity . . . is to be determined by shore scale at load." (Pet. Ex. A at 13; Pet. Ex. B at 5.)

that the arbitrator has the authority to order one side to pay attorneys' fees." Eyewonder, Inc. v. Abraham, 2010 WL 3528882, at *4 (S.D.N.Y. Sept. 3, 2010). And, although the Arbitration Award did not include the precise calculation of legal fees awarded to Jenlor, the "arbitrator's rationale for an award need not be explained." D.H. Blair & Co., Inc., 462 F.3d at 110; see also Porzig v. Dresdner, 497 F.3d 133, 143 n.7 (2d Cir. 2007) ("We do not hold . . . that any failure on the part of an arbitration panel to set forth a transparent [legal] fee analysis will subject the award to heightened judicial scrutiny."); Landmark Ventures, Inc., 63 F. Supp. 3d at 357. "Both parties claim[ed] interest, costs, and attorney fees" and counsel submitted "declarations of costs and attorneys' fees incurred" to the arbitration panel. (Pet. Ex. B at 2; Pet. at 4); see DiRussa v. Dean Witter Reynolds Inc., 121 F.3d 818, 824 (2d Cir. 1997) (where "the parties clearly submitted to the arbitrators the issue whether [plaintiff] was entitled to attorney's fees"); Eyewonder, Inc., 2010 WL 3528882, at *4; see also D.H. Blair & Co., Inc., 462 F.3d at 109.

Petitioner's request for interest on the Arbitration Award is also granted in accordance with the interest rate provided in the Arbitration Award. (Pet. at 6; Pet. Ex. B at 9-10); see Mason Tenders Dist. Council v. Circle Interior Demolition, Inc., 2009 WL 5061744, at *7 (S.D.N.Y. Dec. 22, 2009). Thus, the Court confirms the arbitration panel's decision to award interest from March 6, 2016 "on the principal sum of $141,403.28 at the rate of 3.50% p.a. [per annum] until such time as the award has been fully paid or is reduced to judgment by a court."[2] (Pet. Ex. B at 10.) Application of this rate yields a daily interest rate of $13.56 (i.e. $141,403.28 x .035 / 365). See Mason Tenders Dist. Council, 2009 WL 5061744, at *7.

[2] By specifying the principal amount as $141,403.28, as opposed to the full Arbitration Award of $210,944.74, the arbitration panel declined to award interest on the components of the Arbitration Award attributable to Jenlor's legal fees and costs in the arbitration ($46,250), the arbitration panel's fees and expenses for rendering the Arbitration Award ($18,750), and interest that accrued prior to the issuance of the Arbitration Award ($4,541.46). (Pet. Ex. B at 9.)

Petitioner's request for costs for the instant confirmation proceeding is granted. Rhonda Enterprises S.A. v. Projector S.A., 2009 WL 290537, at *3 (S.D.N.Y. Feb. 6, 2009); (Pet. at 6). When, as here, a respondent refuses to abide by an arbitrator's decision without justification, costs may properly be awarded. Rhonda Enterprises S.A., 2009 WL 290537, at *2-3 (quoting Int'l Chem. Workers Union (AFL–CIO), Local No. 227 v. BASF Wyandotte Corp., 774 F.2d 43, 47 (2d Cir. 1985)). Respondent has "presented no justification or reason for the failure to abide by the arbitrator's decision." Id. at *1, 3.

IV. Conclusion & Order

For the reasons set forth above, Petitioner's motion to confirm the Arbitration Award [#10], in the amount of $210,944.74, plus interest at a daily rate of $13.56 from March 6, 2016 through April 21, 2016 on the principal amount of $141,403.28, is granted. Post-judgment interest is also granted at the statutory rate.

Petitioner shall submit, for the Court's approval, a statement of costs incurred in this confirmation proceeding, by May 5, 2016.

Dated: New York, New York
April 21, 2016

RMB

Hon. Richard M. Berman, U.S.D.J.