UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH WALKER AND COMPANY, LLC., :
                                 :
         Petitioner,   :
                                 :
    v.   : Civil Action No. 01-2693 (JR)
                                 :
OCEANIC FATS & OIL(S) PTE, LTD., :
                                 :
         Respondent.   :

MEMORANDUM

Petitioner Joseph Walker and Company is a South Carolina company that sells cotton. Walker submitted to an international arbitration panel its dispute with respondent Oceanic Fats & Oil(S) over a cotton contract. The arbitration panel found that Oceanic was the "purchasing entity," rejecting Oceanic's submission that it had acted only as a financing agent for the buyer, and found for Walker as its claim that Oceanic had failed to complete its part of the transaction. In this Court, Walker petitions to confirm and enforce the arbitration award pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §§ 201-208. The petition will be granted.

Background

On February 17, 2001, Joseph Walker executed, for his company, a contract for the sale of 9,546 bales of cotton to a Chinese purchaser. The contract was executed for Oceanic by Jeffrey Tan. Walker made an initial shipment of cotton, but,

after a number of requests to delay further shipment, and having received no payment, Walker unloaded the remaining cotton from shipping containers, stored it in a warehouse, and demanded arbitration. The arbitration demand, filed with the American Cotton Shippers Association, named Oceanic, International Reliance Group, and Refco as respondents. On September 15, 2001, Oceanic responded that its involvement in the transaction was simply as a financier and not as a contractual party, and it asserted that Walker's contract was with Jeffrey and B.Y. Tan and International Reliance Group.

The arbitration panel's decision issued on November 5, 2001, rejected Oceanic's contention that Jeffrey Tan lacked authority to act on its behalf and found that Oceanic's subsequent actions and those of other parties involved in the transaction "clearly evince[d]" Oceanic's "acceptance of its obligations in the early stages of the execution of the contract."

Oceanic noted its intention to appeal that ruling. After it failed to comply with ACSA's requirement that an appealing party provide a certified check for the amount of the award, however, the panel issued its final decision on December 11, 2001.

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<u>Analysis</u>

Review of arbitration rulings by courts is "extremely narrow and exceedingly deferential. . . . In fact, [j]udicial review of arbitration awards is among the narrowest known in the law." <u>First State Ins. Co. v. Banco De Seguros Del Estado</u>, 254 F.3d 354, 357 (1st Cir. 2001) (internal citations omitted). Under the Convention, a reviewing court is to 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. The only defenses against enforcement -- seven in number -- are found in Article V of the Convention. <u>Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte</u>, 141 F.3d 1434, 1441-43, 1446 (11th Cir. 1998). Oceanic "bear[s] the burden of proving that any of these seven defenses are applicable." <u>Id.</u> at 1442.

Oceanic argues for "refusal . . . of recognition" under Article V(1)(a), which applies where parties to the agreement "were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made." Oceanic argues that "prior to entering judgment on the award, the Court may review an arbitrator's determination of issues of law de novo and combined issues of fact and law to determine if they were

erroneous." Oceanic Resp. at 7.[1] Oceanic's position is that, if

the court would only review the record,[2] it would determine that

Oceanic was in fact merely the financing agent, that Jeffrey Tan

did not in fact have the authority to execute the contract for

the purchase of cotton, and that Oceanic in fact played the same

financing agent role as did Refco. Oceanic essentially asks this

Court to find that the arbitrators got it wrong.

That is not the role of this Court. Under the

Convention, a district court's review of an award "is strictly

limited." Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys "R" US,

Inc., 126 F.3d 15, 19 (2d Cir. 1997). That limitation is

particularly stringent as it applies to the Article V(1)(a)

defense that Oceanic attempts to invoke, since Article V(1(a)

refers back to the Article II agreement to arbitrate and is

waived by a failure to object prior to and during arbitration

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[1] The cases cited by Oceanic for this proposition are inapposite. Chi. Truck Drivers, Helpers and Warehouse Workers Union (Indep.) Pension Fund v. Louis Zahn Drug Co., 890 F.2d 1405, 1409-1410 (7th Cir. 1989), involved a review of an arbitration award under the Multiemployer Pension Plan Amendments Act of 1980, which has its own standards of review. Anderson v. Bessemer City, N.C., 470 U.S. 564 (1985), involved review of a trial court's factual findings rather than review of an arbitration award.

[2] The 391-page record submitted by Oceanic consists primarily of letters, faxes, and emails between the various companies. The parties did not request an oral hearing before the arbitration panel.

proceedings. Cf. Overseas Cosmos, Inc. v. NR Vessel Corp., No.

97 Civ. 5898, 1997 WL 757041, at *2-3 (S.D.N.Y. Dec. 8, 1997).

Based on the Convention's "pro-enforcement bias[,]"

Parsons & Whittemore Overseas Co., Inc. v. Societe Generale de

L'Industrie du Papier, 508 F.2d 969, 973 (2d Cir. 1974), and

because Oceanic has not established a valid Article V defense,

the arbitration award must be confirmed.

Petitioner may present an appropriate order, including

an award of prejudgment interest at market rates. (The form

of order should be in Word or WordPerfect and submitted by e-mail

addressed to James_Robertson@dcd.uscourts.gov.) Attorneys' fees

will not be awarded.

                                    JAMES ROBERTSON
                              United States District Judge