

United States District Court, S.D. New York.

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02 Civ. 2674 (SAS) (S.D.N.Y. Jun 25, 2002)

.

Decided June 25, 2002

ALCATEL SPACE, S.A. v. LORAL SPACE COMMUNICATIONS

ALCATEL SPACE, S.A., and ALCATEL SPACE INDUSTRIES, S.A., Petitioners, v.  
LORAL SPACE COMMUNICATIONS LTD., LORAL SPACE COMMUNICATIONS  
CORP., LORAL SPACECOM CORP., and SPACE SYSTEMS LORAL, Inc., Respondents.

· 02 Civ. 2674 (SAS)

· United States District Court, S.D. New York.

· June 25, 2002

George F. Hritz, Esq., Hogan Hartson L.L.P., New York, New York, for plaintiffs.

Robert T. Cave, Esq., Jeremy T. Monthy, Esq., Hogan Hartson L.L.P., Washington, D.C.

Steven H. Reisberg, Esq., Colin F. Bell, Esq., Kimberly S. May, Esq., Anamika Samanta,  
Esq., Willkie Farr Gallagher, New York, New York, for defendants.

OPINION AND ORDER

SHIRA A. SCHEINDLIN, Judge

On February 9, 2002, the International Court of Arbitration of the International Chamber of Commerce (the "ICC") rendered an arbitral award (the "Award") in the first phase of an arbitration proceeding between petitioners Alcatel Space, S.A. and Alcatel Space Industries, S.A. (collectively "Alcatel") and respondents Loral Space Communications Ltd., Loral Space Communications Corporation, Space Systems/Loral, Inc. ("SS/L"), and Loral Spacecom Corporation (collectively "Loral"). Alcatel now seeks an order confirming and enforcing that Award pursuant to 9 U.S.C. § 207 and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"). For the reasons stated below, Alcatel's motion is granted.

I. BACKGROUND

Since 1991, the parties have been involved in a strategic alliance regarding their satellite related businesses. See *Alcatel Space, S.A. v. Loral Space Communciations Ltd.*, 154 F. Supp.2d 570, 573 (S.D.N.Y. 2001) ("Alcatel I"), *aff'd*, 25 Fed. Appx. 83, 2002 WL 200269 (2d Cir. Feb. 5, 2002). As part of this alliance, the parties entered into two agreements called the Operational Agreement and the Alliance Agreement (collectively the "Agreements"). See *id.* Award Sentence ("Award"), Ex. 1 to Affidavit of George F. Hritz, attorney for Alcatel, in Support of Petitioners' Motion to Confirm and Enforce Arbitral Award ("Hritz Aff."), ¶¶ 7, 9. The Alliance Agreement gave Alcatel various rights with respect to SS/L, including, among other things, board membership rights, informational rights, prior approval rights, and stock purchase rights. See Award ¶¶ 9, 63, 67, 75; Alcatel I at 577-83. It also included provisions concerning the composition of the SS/L Board of Directors, Board meetings and actions taken by the Board. See Award ¶¶ 75-78, 81-82.

#### A. The Preliminary Injunction Proceeding

On March 16, 2001, Alcatel filed an action against Loral in this Court seeking to preliminarily enjoin Loral from acting in derogation of the Agreements (the "Injunction Proceeding").<sup>1</sup> See Alcatel I at 572. On March 29, 2001, Loral cross-moved to dismiss the Complaint and to compel arbitration. See *id.* On April 26, 2001, this Court granted Alcatel's motion for a preliminary injunction, denied Loral's motion to dismiss the Complaint, and granted Loral's motion to compel arbitration (the "Injunction Order"). See *id.* at 585-86. The Injunction Order provided, in part:

1.

For a more detailed description of the strategic alliance, the Agreements, and the events leading up to this lawsuit, see Alcatel I at 573-76.

On or before May 14, 2001, [Loral] shall resume providing to [Alcatel] the same type and quality of information previously provide pursuant to sections 4.2(e) and 6.4 of the Alliance Agreement, with the same frequency and timeliness as it was provided prior to October 2000. *Id.* at 585. The Court also recognized that Alcatel had "fully reserved [its] rights to seek . . . [other] information covered by the Alliance Agreement withheld by defendants since October 2000 . . . ." *Id.* In addition, the Court stated that the Injunction Order would remain in effect "until further Order of this Court or of the arbitral tribunal, or upon the expiration of the Alliance Agreement, whichever is earlier." *Id.*

By Order dated February 14, 2002, this Court closed the Injunction Proceeding. See 2/14/02 Order, Ex. 3 to Hritz Aff. The Court stated, however, that "should the parties wish to confirm

or vacate the arbitration award, they [should] bring a separate action which [the Court would] accept as a related case." Id.

## B. Phase I of the Arbitration Proceeding

On April 11, 2001, Alcatel filed Request for Arbitration with the International Court of Arbitration of the ICC. See Award ¶ 20. Loral filed an Answer and Counter-Claim on June 29, 2001. See id. ¶ 21. By consent of the parties and the arbitral tribunal (the "Panel"), the arbitral proceedings were bifurcated into two phases, with "Phase I" limited to the following issues:

(1) "Whether the Agreements will terminate effective [February 22,] 2002;"

(2) "Whether [Loral] has breached the Agreements by providing confidential SS/L information to [a certain third party];"

(3) "Whether [Loral] has breached the Agreements by denying [Alcatel] regular and ongoing access to information regarding SS/L's operations;"

(4) "Whether [Alcatel] is entitled to copies of all information withheld from its SS/L representative [Mr. Barkas] between October 2000 to the date of the tribunal's decision, including copies of the information preserved by [Loral's] counsel, pursuant to a [March 29], 2001 consent order entered in the U.S. District Court, which documents are represented to contain all the confidential information [Loral] gave to [a certain third party];"

(5) "Whether [Loral] has breached the Agreements by failing to hold SS/L Board Meetings." Id. ¶ 29. The issues reserved for Phase II included:

(1) "Whether the Parties have committed additional breaches of the Agreements as alleged in the Parties' Phase I memorials or any other claims alleged in Phase II and/or committed one or more torts in connection with the Agreements giving rise to liability;" and

(2) "Damages on all claims (Phase I and Phase II)."

Id.

Phase I hearings were held in Geneva, Switzerland December 17-19, 2001. See Hritz Aff. ¶ 19. On February 9, the Panel rendered the Award for Phase I, holding that:

- (1) "The Agreements will terminate effective [February 22,] 2002;" (the "Termination Date")
- (2) The Injunction Order "will cease to have effect" as of February 22, 2002;
- (3) Loral "breached the Agreements by providing confidential information to [a certain third party];"
- (4) Loral "breached the Agreements by denying [Alcatel] regular and ongoing access to information regarding SS/L's operations;"
- (5) Alcatel "is entitled to copies of all information withheld from its SS/L representative [Mr. Barkas] between October 2000 to the date of [the Award] . . .
- (6) Loral "breached the Agreements by failing to hold SS/L Board Meetings."

Award ¶ 83.

The Panel also made special note of certain "surviving obligations of the Parties." Id. ¶ 56. Pursuant to Section 8.1(c) of the Alliance Agreement, two provisions that survive the Termination Date are the arbitration clause contained in Section 9.1 of the Alliance Agreement, and the confidentiality provision contained in Section 6.4 of that Agreement (the "Confidentiality Provision"). See Alliance Agreement, Ex. 5 to Hritz Aff., § 8.1(c). The Confidentiality Provision states:

Notwithstanding anything to the contrary contained in this Agreement, any written information regarding the bidding or: pricing of work and other competitive matters, or any other proprietary information, relating to SS/L or a [participant in the strategic alliance] will be disclosed hereunder only to those employees of any party hereto having a need to know such information for purposes of performance of their duties as members of the Management Liaison Committee or Research and Development Committee contemplated by the Operational Agreement, and such information shall not be used for any other purpose. All such information shall be returned to the applicable party by each of the other parties hereto (or destroyed with no copies retained) upon termination of this Agreement with respect to (i) all parties hereto or (ii) a [participant in the strategic alliance] in accordance with Section 8.1,

and no party shall make any use whatsoever of such information after it shall have ceased to be a party hereto.

Alliance Agreement § 6.4 (emphasis added).

For reasons beyond the parties' or the Panel's control, the parties did not receive a copy of the Award until February 21, 2002, one day before the Termination Date. See Affidavit of Steven H. Reisberg, attorney for Loral ("Reisberg Aff.") ¶ 10.

### C. The Parties' Disputes Over Information Disclosures

By letter dated February 28, 2002, counsel for Alcatel requested that, pursuant to the Award, Loral provide to Alcatel certain documents no later than March 2, 2002.<sup>2</sup> See 2/28/02 2/28/02 Ltr. at 1; see also Hritz Aff. ¶ 27; Reisberg Aff. ¶ 11. Counsel for Loral responded by letter dated March 4, 2002. See 3/4/02 Letter from Steven H. Reisberg to George F. Hritz ("3/4/02 Ltr."), Ex. 9 to Hritz Aff.; Hritz Aff. ¶ 37; Reisberg Aff. ¶ 12. In that letter, counsel for Loral informed Alcatel that Loral believed it had already "produced all information to which [Alcatel] was entitled pursuant to the Award." 3/4/02 Ltr. at 1. Counsel also asserted that, because the Termination Date had passed, Alcatel was obliged under the Confidentiality Provision to return or destroy all confidential SS/L information that Alcatel had obtained while the Agreements were in effect. See *id.* at 1-2. Loral added that, if Alcatel were to need some of these documents for Phase II of the arbitration, the parties would "need to enter into an appropriate confidentiality agreement before any such information is disclosed in connection with Phase II . . . ." *Id.* at 2.

2.

Specifically, counsel requested copies of: (1) "complete, unredacted SS/L corporate review documents from November 1, 2000 to April 30, 2002;" (2) "complete, unredacted SS/L monthly program reviews;" (3) "Strategic Plans for SS/L"; (4) "all SS/L financial data with appendices, as usually provided under the `title performance parameters"; (5) "SS/L program review reports for each month through February 22, 2002;" and (6) complete, unredacted documents "provided by SS/L and Loral to [a certain third party] from at least . . . June 1999 to February 22, 2002." 2/28/02 Letter from George F. Hritz to Steven H. Reisberg ("2/28/02 Ltr."), Ex. 8 to Hritz Aff., at 1-2.

Alcatel did not respond to Loral's March 4th Letter. See Reisberg Aff. ¶ 13. Rather, by letter dated March 7, 2002, Alcatel notified the Panel of the dispute that had arisen between the parties as to: (1) whether Loral had fulfilled its production obligation pursuant to the Award; and (2) whether Alcatel was obliged to return to Loral certain documents that were "provided to [Alcatel] as part of the arbitration proceedings and that remain necessary for [Alcatel] to seek the damages to which they are entitled." 3/7/02 Letter from George F. Hritz to the Panel ("3/7/02 Ltr."), Ex. F to Reisberg Aff., at 1-2. Counsel for Alcatel suggested that, in order to obtain "interim relief" from the Panel, the parties should submit letter briefs to the Panel and

discuss the disputed issues at an upcoming conference regarding Phase II of the proceedings. Id. at 2.

At a Phase II pre-trial conference held in Geneva on March 8, 2002, it was agreed that, during the month of March, the parties would exchange letters addressing the disputes raised in Alcatel's March 7th Letter. See Minutes of March 8, 2002 Phase II Pre-Trial Conference ("March 8th Minutes"), Ex. G to Reisberg Aff., at 6; Reisberg Aff. ¶ 16. Alcatel was to propose a briefing schedule, but it appears that no such schedule was ever proposed and no letters were ever exchanged. See Reisberg Aff. 16. Instead, on April 29, 2002, Alcatel filed this action alleging that Loral has failed to produce certain documents mandated by the Award and the Injunction Order. See Memorandum of Law in Support of Petitioners' Motion to Confirm and Enforce Arbitral Award ("Pet. Mem.") at 10.

#### D. Current Status of the ICC Proceedings

At the March 8th pre-trial conference, the Panel established a schedule for the continuation of proceedings before it. "See Reisberg Aff. ¶ 17; March 8th Minutes' at 4. Hearings on the issues of liability for all claims and counterclaims will be held in October 2002, and a hearing on the issue of damages is set for May 2003. See March 8th Minutes at 4. An award in Phase II is expected in January 2003. See id.

On April 10, 2002, Loral filed its Statement of Claims for Phase II. See Reisberg Aff. ¶ 18. As one of its counterclaims, Loral seeks an injunction requiring Alcatel to comply with its obligations under the Confidentiality Provision and return the confidential and proprietary information which it has refused to return. See id.; see also Respondents' Phase II Statement of Their Counterclaims, Answer and Defenses, Ex. 2 to Affidavit of George F. Hritz in Further Support of Petitioners' Motion to Confirm and Enforce Arbitral Award ("Hritz Supp. Aff.").

## II. LEGAL STANDARD

"[T]he confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court." *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984). Under the Convention, "the district court's role in reviewing a foreign arbitral award is strictly limited."<sup>3</sup> *Yusuf Ahmed Alghanim Sons*, 126 F.3d at 18. The court is required to confirm the award unless the party opposing confirmation or enforcement proves the existence of one of the grounds for refusal or deferral that is specifically enumerated in the Convention.<sup>4</sup> See *Europcar Italia S.p.A. v. Maiellano Tours, Inc.*, 156 F.3d 310, 313 (2d Cir. 1998); *Yusuf Ahmed Alghanim Sons*, 126 F.3d at 18 (citing 9 U.S.C. § 207).

Neither party disputes the applicability of the Convention to this case and it is clear to the Court that the Convention does apply. The Convention provides that it will "apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal." Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 ("Convention"), 21 U.S.T. 2517, 330 U.N.T.S. 38, reprinted at 9 U.S.C. § 201, Art. I (1); see also *Yusuf Ahmed Alghanim Sons v. Toys "R" Us, Inc.*, 126 F.3d 15, 18 (2d Cir. 1997). Here, the Award was "made" by the ICC in Switzerland and recognition and enforcement are sought in the Southern District of New York. See *Hritz Aff.* ¶¶ 19-20.

4.

The seven specifically-enumerated grounds are: (1) "The parties to the agreement . . . were . . . under some incapacity, or the said agreement is not valid under the law;" (2) "The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings;" (3) "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;" (4) "The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties;" (5) "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;" (6) "[T]he subject matter of the difference is not capable of settlement by arbitration;" or (7) "[R]ecognition or enforcement of the award would be contrary to the public policy of the country in which enforcement or recognition is sought." *Yusuf Ahmed Alghanim Sons*, 126 F.3d at 18 (citing Convention, Arts. V(1), V(2)) (quotation marks omitted).

In confirming or enforcing an award, however, "the Court may not go beyond the award to decide questions that the arbitrator did not decide." *Rizzo v. Zalkin*, No. 92 Civ. 6127, 1994 WL 114836, at \*6 (S.D.N.Y. Mar. 31, 1994) (citing *Zephyros Maritime Agencies, Inc. v. Mecicana De Cobre, S.A.*, 662 F. Supp. 892, 895 (S.D.N.Y. 1987)). Where the parties dispute the meaning of an award, the court must examine the award to determine whether a provision is ambiguous. See *id.* If "the award is clear and unambiguous, it must be" enforced. *Zephyros Maritime Agencies, Inc.*, 662 F. Supp. at 895. If it is ambiguous, however, the court should remand to the arbitrator for further findings. See *Rizzo*, 1994 WL 114836, at \*6; *Zephyros Maritime Agencies, Inc.*, 662 F. Supp. at 895; *Hellman v. Program Printing, Inc.*, 400 F. Supp. 915, 918 (S.D.N.Y. 1975).

### III. DISCUSSION

#### A. Confirmation of the Award

Alcatel has moved to confirm the Award for Phase I and Loral joins in this motion. See Pet. Mem at 1, 13-14; Respondents' Memorandum of Law in Support of an Order Confirming the Phase I Award and in Opposition to Petitioners' Motion for Enforcement ("Resp. Opp.") at 2. "An interim award that finally and definitely disposes of a separate, independent claim may

be confirmed notwithstanding the absence of an award that finally disposes of all claims that were submitted to arbitration"*Zephyros Maritime Agencies, Inc.*, 662 F. Supp. at 895 (quoting *Eurolines Shipping Co. v. Metal Transport Corp.*, 491 F. Supp. 590, 592 (S.D.N.Y. 1980)). As neither party has identified any claim in the Phase I Award that is not severable from the claims that will be addressed in Phase II, the Award is hereby confirmed.

## B. Enforcement Order

Alcatel seeks an order enforcing the Award and compelling Loral to provide documents that have allegedly been withheld in violation of that Award. Alcatel insists that the Award is "clear" that Loral must produce "all information withheld" between October 2000 and the date of the Award. Reply Memorandum of Law in Support of Petitioners' Motion to Confirm and Enforce Arbitral Award ("Pet. Repl.") at 1. Loral has allegedly violated this mandate by: (1) withholding certain documents; (2) improperly redacting information from some documents; and (3) placing improper limitations on Alcatel's use of certain documents. See Pet. Mem. at 10-12, Pet. Repl. at 9-11. Alcatel claims that, absent a court order enforcing the Award, Loral will continue to "stonewal[l]" and thereby prevent Alcatel from discovering additional breaches that should be the subject of claims in Phase II. Pet. Repl. at 2; see also Pet. Mem. at 15-16.

Loral insists that it has complied with the information disclosures mandated by the Award. It claims that the Award only required Loral to provide to Mr. Barkas copies of certain previously withheld documents "while the Agreements were still in effect." Resp. Opp. at 11. It argues that the termination of the Agreements on February 22, 2002 triggered Alcatel's obligation under the Confidentiality Provision to return all of the proprietary information that had been turned over while the Agreements were in effect. See *id.* To the extent that Alcatel denies the applicability of the Confidentiality Provision to these documents, Loral argues, it has "repudiat[ed]" the Alliance Agreement and thereby justified Loral's withholding of the remaining documents. *Id.* at 13-14.

The questions presented by this motion are: (1) whether the Award requires Loral to produce previously withheld documents to Alcatel after the Termination Date; and (2) whether Alcatel is required to return documents in its possession after the Termination Date. The Panel clearly held that "[Alcatel] is entitled to copies of all information withheld" from it between October 2000 and the date of the Award. Award ¶ 83. In doing so, it agreed with this Court's finding that Alcatel improperly "sever[ed] the flow of information during [the] six months" prior to the Injunction Order, and that the information should have been "disclosed to Mr. Barkas on the same basis as before." *Id.* ¶ 71. While the Award recognizes that Loral's disclosure obligation under the Agreements will cease on the Termination Date, see *id.* ¶ 74 (stating that "no obligation to convey information to Mr. Barkas will derive from the Operational Agreement once it is terminated"), it places no time limitation on Loral's disclosure obligation under the Award.

The Panel was fully aware that the parties would receive the Award very close to, or even on, the Termination Date. See *id.* ¶ 56; Minutes of December 18, 2001 arbitration hearing, Ex. 1 to Hritz Supp. Aff., at 822. It determined that the Injunction Order should terminate on this



date and specifically so stated. See Award ¶ 83. Yet the Panel never stated that Alcatel's "entitlement" to the withheld documents will terminate at any time. Thus, under the Award, Loral is still obligated to provide Alcatel with "copies of all information withheld" between October 2000 and the date of the Award. *Id.*

On the other hand, the arbitrators have not yet addressed Alcatel's purported obligation to return the documents Loral was ordered to disclose. Because the question of how the Confidentiality Provision applies to these documents raises "a new dispute," the matter must be remanded to the Panel for resolution. See *Rizzo*, 1994 WL 114836, at \*6 (remanding to arbitrators for resolution of new dispute generated by arbitral award).

Loral insists that, even if its disclosure obligation extends beyond the Termination Date, an enforcement order is not necessary at this time. It notes that it resumed the supply of information to Mr. Barkas the day after receipt of the Injunction Order, provided more documents during the arbitration proceedings, and has provided Alcatel with additional documents in response to this motion. See *Resp. Opp.* at 9-10; 4/29/02 Affidavit of C. Patrick DeWitt, President of SS/L ("DeWitt Aff.") ¶ 3. But as Alcatel correctly points out, the Injunction Order and the Award mandated immediate disclosure, not a slow trickle of information. See *Pet. Repl.* at 8. In light of Loral's continued failure to comply with the Injunction Order and the subsequent Award on the same subject, an enforcement order is warranted.

### C. Attorneys' Fees and Other Costs

Alcatel requests "costs and disbursements accrued in connection with this proceedings," including "attorneys fees." *Pet. Mem.* at 19; *Proposed Order* at 2, attached to *Pet. Mem.* The general rule is that each party in a federal litigation pays its own attorneys' fees. See *In re Arbitration of Briamonte v. Liberty Brokerage, Inc.*, No. 99 Civ. 2735, 2000 WL 666350, at \*2 (S.D.N.Y. May 19, 2000); *Brotman v. Sant Cassia Inv. Mgmt.*, No. 96 Civ. 6727, 1997 WL 401671, at \*4 (S.D.N.Y. Jul. 16, 1997) (citing *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247 (1975)). There are three recognized exceptions to this general rule: (1) where a statute or enforceable contract provides for an award of attorneys' fees; (2) where the prevailing plaintiff confers a common benefit upon a class or fund; and (3) where a party wilfully disobeys a court order or "when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Alyeska Pipeline Serv. Co.*, 421 U.S. at 257-60. None of these exceptions apply here. First, there is no evidence that the Alliance Agreement or the Operational Agreement provides for attorneys' fees, and "there is nothing in the Federal Arbitration Act itself that would authorize a district court to go beyond confirming an arbitrators' award and independently award additional attorneys' fees," *In re Arbitration of Briamonte*, 2000 WL 666350, at \*2 (quoting *Menke v. Monchecourt*, 17 F.3d 1007, 1008 (7th Cir. 1994)). Second, "the common benefit exception applies only to cases in which the other beneficiaries of the litigation should reimburse the prevailing party out of the common treasury." *Brotman*, 1997 WL 401671, at \*4 (citing *Hall v. Cole*, 412 U.S. 1, 7 (1973); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 392 (1970)). Third, although Loral has been slow to meet its disclosure obligations, its actions do not rise to the level of "bad faith" or

"vexatious[ness]" required for an award of attorneys' fees. Alyeska Pipeline Serv. Co., 421 U.S. at 257-60. Accordingly, Alcatel's request is denied.

#### IV. CONCLUSION

For the reasons stated above, Alcatel's motion to confirm and enforce the Award is granted, but its request for costs and attorneys' fees is denied. The outstanding dispute over the effect of the Confidentiality Provision after February 22, 2002 is remanded to the Panel for resolution. The parties shall submit an appropriate judgment within ten days from the receipt of this Opinion.