BROOME & WELLINGTON v. LEVCOR INTERNATIONAL

United States District Court, Southern District of New York

May 7, 2003

BROOME & WELLINGTON, PETITIONER, AGAINST LEVCOR INTERNATIONAL, INC. AND ANDREX INDUSTRIES, CORP., RESPONDENT.

The opinion of the court was delivered by: Laura Taylor Swain, United States District Judge

MEMORANDUM ORDER

Petitioner Broome & Wellington ("Broome" or "Petitioner"), a limited partnership chartered in England, moves to confirm an arbitration award dated June 28, 2002 (the "Award"). Respondents Levor International, Inc. and Andrex Industries Corp. ("Respondents"), New York corporations, request that the Court deny Broome's petition, vacate the Award and refer the parties for a new arbitration.

The Court has considered thoroughly the record and all written submissions made in connection with this motion. For the following reasons, Broome's petition to confirm the Award is granted and Respondents' application is denied.

The Court has jurisdiction of this proceeding pursuant to 9 U.S.C. § 201.*fn1

BACKGROUND

In or about February 1999 and March 1999, Broome and Respondents Andrex and Levcor entered into agreements whereby Andrex and Levcor purchased fabric that Broome shipped into the United States from Thailand. (See Petition to Confirm Arbitration, Exs. B, C.) The parties subsequently disputed whether the fabric shipped contained the correct blend of cotton and polyester. The dispute was submitted to arbitration. Because Broome was an English limited partnership and the transaction arose from international commerce, the arbitration was conducted according to the International Rules of Arbitration.

On June 3, 2002, the arbitrator issued an award directing Respondents to pay Broome $69,441.46, plus reasonable attorneys' fees and costs of in the amount of $17,500. (Id. Ex. E.) By letter dated June 10, 2002, Respondents requested that the award of attorneys' fees and costs be modified because the award was not based on testimony or supported by invoices for services rendered. (Id. Ex. F.) Petitioner responded by letter dated June 17, 2002, disputing Respondents' contentions and asserting that evidence relevant to the reasonable costs and fees incurred in the case was presented. (Id. Ex. G.) On June 21, 2002, the arbitrator denied the Respondent's request to modify the award. (Id. Ex. H.) On June 28, 2002, the arbitrator issued a ruling which specifically stated that it was the final ruling rendered in the arbitration and

that it encompassed the June 21, 2002 determination pertaining to Respondents' request for modification of the Award. (Id. Ex. A.) Broome seeks to confirm the June 28, 2002 Award.

DISCUSSION

"Arbitration awards are subject to very limited review in order to avoid undermining the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation." Willemijn Houdstermaatschappij, BV v. Standard Microsystems Corp., 103 F.3d 9, 12 (2d Cir. 1997) (quotation marks omitted); see also Insurance Co. of North Am. v. Ssangyong Engineering & Const. Co., Ltd., No. 02 Civ. 1484, 2002 WL 377538 (SAS), at *4 (S.D.N.Y. Mar. 11, 2002). Under the Federal Arbitration Act (the "FAA"), a court must confirm an award upon proper application unless the award is vacated, modified or corrected on grounds specified in the statute. See 9 U.S.C.A. § 10(a) (West 1999 and 2002 Supp.)*fn2 In addition, the Second Circuit has recognized that a court may vacate an arbitration award that was rendered in "manifest disregard of the law." Greenberg v. Bear, Stearns & Co., 220 F.3d 22, 28 (2d Cir. 2000). "[R]eview for manifest error is severely limited." Id. A determination that an arbitration award was in manifest disregard of the law requires judicial findings that: "(1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case." Id.

"In very limited situations, a court may [also] vacate an award because arbitrators have manifestly disregarded the evidence." McDaniel v. Bear Stearns & Co., Inc., 196 F. Supp.2d 343, 351 (S.D.N.Y. 2002). "[J]udicial review of an arbitrator's factual determinations is quite limited." Beth Israel Med. Ctr. v. Local 814, No. 99 Civ. 9828 (JSM), 2000 WL 1364367, at *6 (S.D.N.Y. Sept. 20, 2000). Accordingly, "[a] court may only vacate an arbitrator's award for manifest disregard of the evidence if `there is strong evidence contrary to the findings of the arbitrator and the arbitrator has not provided an explanation of his decision.'" McDaniel, 196 F. Supp.2d at 351 (quoting Beth Israel Med. Ctr., 2000 WL 1364367, at *6). "A court may not review the weight the arbitration panel accorded conflicting evidence." Id.; see also Sobol v. Kidder, Peabody & Co., Inc., 49 F. Supp.2d 208, 216 (S.D.N.Y. 1999), aff'd, 164 F.3d 617, 1998 WL 695041 (2d Cir. 1998). "Nor may a court question the credibility findings of the arbitrator." McDaniel, 196 F. Supp.2d at 351 (citing Beth Israel Med. Ctr., 2000 WL 1364367, at *6; Greenberg, 1999 WL 642859, at *1).

The party seeking vacatur of an arbitration award bears the burden of proving that the award was rendered in manifest disregard of fact or law. Ottley v. Schwartzberg, 819 F.2d 373, 376 (2d Cir. 1987) ("[t]he showing required to avoid summary confirmation of an arbitration award is high"). However, even if that party proves that the arbitrators' decision is based on a manifest error of fact or law, a court must nevertheless confirm the award if legitimate grounds for the decision can be inferred from the facts of the case. See Willemijn Houdstermaatschappij, 103 F.3d at 13; Greenberg, 1999 WL 642859, at *2.

Respondents raise numerous factual issues relating to the dispute underlying the arbitration proceeding and attack the conclusions reached by the arbitrator in rendering the Award. The Award, dated June 28, 2002, which was the final award and which superseded the arbitrator's prior determinations, confirms that the arbitrator "heard the proofs and allegations of the

Parties," and explains the basis for the Award. See generally Award. Respondents' contentions concerning the arbitrator's conclusions do not provide a basis to vacate the Award. "When arbitrators explain their conclusions . . . in terms that offer even a barely colorable justification for the outcome reached, confirmation of the award cannot be prevented by litigants who merely argue, however persuasively, for a different result." In re Andros Compania Maritima, S.A. of Kissavos, 579 F.2d 691, 704 (2d Cir. 1978); see also John T. Brady & Co. v. Form-Eze Sys. Inc., 623 F.2d 261, 264 (2d Cir. 1980) ("[t]his court has generally refused to second guess an arbitrator's resolution of a contract dispute").

Respondents also argue that the arbitration was not conducted according to the applicable Rules of Arbitration, contending that the arbitrator (i) permitted Broome to call a witness to testify who had not been identified as a witness in accordance with the Rules, (ii) rendered three awards which failed to give the reasons for the awards, (iii) impermissibly shifted the burden of proof, (iv) misrepresented testimony at the arbitration hearings, and (v) impermissibly awarded attorneys' fees with factual support. Respondents contend that the alleged irregularities of the proceeding, taken as a whole, amount to misconduct sufficient to vacate the Award within the meaning of section 10(a). Respondents have made no showing, however, that the Award was based upon misconduct warranting vacatur under section 10(a) or misconduct that amounted to manifest disregard of the law.*fn3

"Misconduct must amount to a denial of fundamental fairness of the arbitration proceeding to warrant vacating the award." Areca, Inc. v. Oppenheimer & Co., Inc., 960 F. Supp. 52, 55 (S.D.N.Y. 1997) (citations omitted; internal quotations omitted). "It is well settled that arbitrators are afforded broad discretion to determine whether to hear evidence." Areca, Inc., 960 F. Supp. at 55. The arbitration process "may proceed with only a summary hearing and with restricted inquiry into factual issues. . . . Although arbitrators must have before them enough evidence to make an informed decision, they need not compromise the speed and efficiency that are the goals of arbitration by allowing the parties to present every piece of relevant evidence." Id. (citations omitted; internal quotations omitted). Given that the arbitrator considered evidence and the arguments of the parties and stated the reasons underlying the Award, there is no basis for vacatur under Section 10(a).

In addition, there is no basis for vacatur of the Award in Respondents' specific allegations of misconduct. Concerning Broome's witness, the FAA provides grounds for vacatur if the arbitrator refused "to hear evidence pertinent and material to the controversy." 9 U.S.C.A. § 10(a). There is nothing in the section 10(a) that provides grounds for vacatur because the arbitrator considered too much evidence. The arbitration proceeding must provide for a sufficient scope of inquiry to enable the arbitrator to make an informed decision. See Areca, Inc., 960 F. Supp. at 55. Here, there is no contention that the evidence was insufficient to enable the arbitrator to make an informed decision, that Broome's representative did not have an opportunity to cross-examine the witness, or that the evidence presented by the witness was not material to the controversy.

In respect of the arbitrator's award of attorneys' fees and costs and the allegedly serial awards rendered by the arbitrator, the record shows that the arbitrator reviewed the fee matter and issued a final award on June 28, 2002 encompassing the prior award documents issued by the arbitrator. It is undisputed that the claim for attorney's fees and costs of $17,500 was discussed by both counsel with the arbitrator. The June 21, 2002 award document recites that the arbitrator "duly heard the proofs and allegations of the Parties" and further states:

At the hearing of May 1st, 2002, the matter of the $17,500.00 for reasonable attorneys' fees and testing costs were brought to light. Each party present had ample time and means to ask anything they wanted. At the conclusion of the hearing, I, the Arbitrator, specifically asked each party if they were finished . . . and if they had anything else to say. Both parties indicated they were finished.
June 21, 2002 Award of Arbitrator.

In addition, it is clear that the award dated June 28, 2002 is the final award. The June 28, 2002 award specifically states: "This ruling is the final ruling covering the Arbitration ruling dated 6/3/02 which had a typographical error and the Arbitration ruling of 6/21/02 . . . concerning reasonable attorneys' fees." Award, at 1. The Award sets forth the reasons for the ruling and refers to the Arbitration decision of June 21, 2002 concerning the reasons for the award of attorneys' fees.*fn4

Respondents further contend that the arbitrator impermissibly shifted the burden of proof and misrepresented testimony at the hearings. It appears that Respondents contend that the arbitrator impermissibly required Respondents to disprove Broome's claim for legal fees and costs and that there was no testimony concerning the amount of fees and costs claimed by Broome. Article 31 of the International Rules provides that the arbitrator shall fix the costs of arbitration, including reasonable legal fees. International Arbitration Rules, Article 31. In the Award, the arbitrator referred to his decision concerning the attorneys' fees and costs on June 21, 2002 and indicates consideration of the proffer of Respondents and Petitioner concerning the attorney's fees and costs. There is no basis for the Court to conclude that the arbitrator made his determination concerning the award of attorneys' fees and costs without considering the evidence proffered during the arbitration proceedings.

Finally, Respondents arguments concerning Broome's witness, the multiple awards, the attorneys' fees and costs, and the conduct of the arbitration hearing do not establish that the Award was rendered in manifest disregard of the law or the evidence. Respondents do not contend that the arbitrator refused to apply a clearly defined, governing legal principle that was clearly applicable to the case. See Greenberg, 220 F.3d at 28. Nor have Respondents demonstrated that "there is strong evidence contrary to the findings of the arbitrator." McDaniel, 196 F. Supp. at 351.

Accordingly, there being no basis under the Convention, the FAA or the judicially created doctrine of manifest disregard of the law or fact, to vacate the Award, the Award is confirmed.

CONCLUSION

For all of the above reasons, the Petitioner Broome's Petition to Confirm the Award is granted in its entirety. The Arbitration Award dated June 28, 2002, is confirmed and judgment shall be entered thereon.

SO ORDERED.