

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

TRAX CONSTRUCTION, LTD.,)	
)	
Petitioner,)	
)	
v.)	Civil Action No.: 1:10-mc-8
)	
)	
DYNCORP INTERNATIONAL, LLC,)	
)	
Respondent.)	

ORDER

Before the Court is Petitioner Trax Construction, Ltd.'s ("Trax") Petition to Confirm the Arbitration Award (Dkt No. 1). Upon review of the petition and the briefs in support and in opposition and for good cause shown, it is hereby ORDERED that Trax's Petition to Confirm the Arbitration Award is DENIED.

Under the Federal Arbitration Act, a court may reject a petition to confirm a foreign arbitration award if "it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified" in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958 21 U.S.T. 2517, T.I.A.S. 6997, 330 U.N.T.S. 38, reprinted following 9 U.S.C.A. § 201 (West 1999) (the "Convention"). See 9 U.S.C. § 207. The Convention identifies seven grounds including, "[t]he award has not yet become binding on the parties . . ." Convention at Art. V(1).

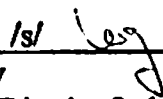
As the Fourth Circuit stated in a recent opinion, "The 'basic objective' of a reviewing court in the arbitration context is 'to ensure that commercial arbitration agreements, like other contracts, are enforced according to their terms, and according to the intentions of the parties.'" *PPG Indus., Inc. v. Int'l Chem. Workers Union Counsel of United Food and Commercial Workers*, 587 F.3d 648, 654 (4th Cir. 2009) (quoting *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 947 (1995)). See also *Vulcan*

Chem. Techs., Inc. v. Barker, 297 F.3d 332, 339-340 (4th Cir. 2002) (discussing the Federal Arbitration Act “primary purpose of ensuring that private agreements to arbitrate are enforced according to their terms”) (internal quotation marks and citation omitted)).

In this case, the Court finds that the award has not yet become due on the parties because of the explicit language in the arbitration agreement entered into by the parties. The agreement states, “[a]ny monies shall be paid after the final decision of the arbitrator’s award or appeal, whichever is applicable.” The Court finds that this language is very clear and that Petitioner cannot enforce the decision of the arbitrator until the appeal process has been exhausted. The reasons Petitioner cites for enforcing the award, in particular Petitioner’s arguments that Respondent has failed to stay the judgment and that the appeal is invalid, are unconvincing and do not change the Court’s finding that the arbitration agreement between the parties is controlling. The Court does not need to decide any issues regarding the Kenya High Court’s jurisdiction or the validity of the appeal as the Court finds that the language of the agreement clearly indicates the intent of the parties at the time of contracting was to allow for appeals to be resolved before any payment is due. As Respondent stated in its brief in opposition, “Trax is a sophisticated party and could have bargained for different language that would have made monies due notwithstanding appeal.” They did not do this, and are not entitled to now try and rewrite the contract.

IT IS SO ORDERED.

March 11, 2010
Alexandria, Virginia



Liam O’Grady
United States District Judge