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*Hong Kong*

*Philippines*

> In the matter of the Arbitration - between - CONTINENTAL  
 > GRAIN COMPANY, CONTINENTAL ENTERPRISES, LTD., and  
 STELLAR  
 > CHARTERING & BROKERAGE, INC., Petitioners, - and - FOREMOST  
 > FARMS INCORPORATED, LA FILIPINA UYGONGEO  
 CORPORATION,  
 > LINCOMA MARKETING COOPERATIVE, INC., MINALIN POULTRY  
 AND  
 > LIVESTOCK COOPERATIVE, PHILIPPINE POULTRY AND  
 LIVESTOCK  
 > COOPERATIVE, RFM COOPERATIVE - THE FOOD CO., RIZAL  
 POULTRY &  
 > LIVESTOCK ASSOCIATION, and S.R. FARMS, INC., Respondents.

97 Civ. 0848 (DC)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT  
 OF  
 NEW YORK

1998 U.S. Dist. LEXIS 3509

March 20, 1998, Decided

March 23, 1998, Filed

> DISPOSITION:  
 > [\*1] Petitioners' motion to confirm the arbitration award granted.

> CORE TERMS:  
 > arbitration award, confirm, confirmation, arbitration, demurrage,  
 > complied,  
 > duly certified copy, party opposing, certified copy, reimbursement,  
 > domestic,  
 > supplied, arbitration clause, arbitrator, three-member, confirmed, vessel

> COUNSEL:  
 > Patrick V. Martin, Esq., HILL, RIVKINS, LOESBERG, O'BRIEN, MULROY &  
 > HAYDEN, New  
 > York, New York, for Petitioners.

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1998 U.S. Dist. LEXIS 3509, \*1

> JUDGES:  
 > DENNY CHIN, United States District Judge.

> OPINIONBY:  
> DENNY CHIN

> OPINION:

> MEMORANDUM DECISION

> Chin, D.J.

> Petitioners, Continental Grain Co., Continental Enterprises, Ltd., and  
> Stellar Chartering & Brokerage, Inc., seek an order confirming an  
> arbitration  
> award, executed by a three-member New York American Arbitration  
> Association  
> panel on February 5-7, 1996. Respondents, Foremost Farms Inc., La Filipina  
> Uygongeo Corp., Lincoma Marketing Cooperative, Inc., Minalin Poultry and  
> Livestock Cooperative, Philippine Poultry and Livestock Cooperative, RFM  
> Corp. -  
> The Food Co., Rizal Poultry & Livestock Association, and S.R. Farms, Inc.,  
> do  
> not oppose petitioners' motion. For the following reasons, the arbitration  
> award  
> is confirmed.

> BACKGROUND

> Petitioners entered into an indemnity agreement (the "Agreement") with  
> respondents on August 9, 1991. Under this Agreement, respondents consented  
> to  
> reimburse petitioners for any demurrage charges that petitioners were  
> required  
> to pay to the chartered vessel [2] that transported their shipment of  
> soybean  
> meal. The Agreement contains an arbitration clause providing as follows:

> Any controversy or claim arising out of, or relating to, this  
> Agreement, or  
> the breach thereof, shall be settled by arbitration in New York in  
> accordance  
> with the Commercial Arbitration Rules of the American Arbitration  
> Association,  
> and judgment upon the Award rendered by the Arbitrator(s) may be entered  
> in any  
> court of competent jurisdiction.

> (Pet'n, Ex. A, @ V(e)).

> Pursuant to the Agreement, petitioners paid the demurrage charges and  
> requested reimbursement from respondents. Respondents neither paid nor

> responded  
> to Petitioners' demand for payment. Petitioners then commenced arbitration  
> proceedings on October 7, 1994. A three-member panel of the American  
> Arbitration  
> Association in New York concluded that petitioners had complied with all  
> their  
> obligations under the Agreement, and therefore were entitled to recover  
> from  
> respondents \$ 605,738.75 as reimbursement for the demurrage charges and  
> attorneys' fees incurred in connection with the demurrage claim tendered  
> by the  
> vessel. The Award allocated payment in the following sums:

>  
> RFM Corporation       \$ 193,459.72  
> Rizal Poultry         \$ 47,274.00  
> & Livestock  
> S.R. Farms, Inc.     \$ 40,001.08  
> Minalin Poultry     \$ 54,546.92  
> & Livestock

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>  
> Philippine Poultry   \$ 156,367.82  
> Foremost Farms, Inc. \$ 127,094.30  
> Lincoma Marketing   \$ 72,729.20  
> Coop.  
> [\*3]

> (Pet'n, Ex. B at 5). The Award also required respondents to pay \$ 1,500 in  
> compensation for the arbitrators and \$ 2,215 for administrative fees and  
> expenses. Id. Petitioners request that this Court confirm the arbitration  
> award  
> in their favor, in accordance with the United Nations Convention on the  
> Recognition and Enforcement of Foreign Arbitral Awards (the "Convention")  
> as  
> codified under 9 U.S.C. @@ 201-208 (Supp. 1998).

#### > DISCUSSION

> [1] United States district courts have original jurisdiction over any  
> action or <sup>[1958 New York]</sup>  
> proceeding under the Convention. 9 U.S.C. @ 203. Article I(1) states that  
> the  
> Convention applies "to arbitral awards not considered as domestic awards  
> in the  
> State where their recognition and enforcement are sought." 9 U.S.C. @ 201.  
> An  
> award is not domestic if the parties involved have their principal place

- > of
- > business outside the court's jurisdiction. Bergesen v. Joseph Muller
- > Corp., 710
- > F.2d 928, 932 (2d Cir. 1983) (holding that the Convention applies to a New
- > York
- > arbitration award between two foreign entities). In the case before this
- > Court,
- > the arbitration award involves parties whose principal places of business
- > are,
- > respectively, Hong Kong and the [\*4] Philippines, and therefore this
- > award
- > falls under the Convention. Accordingly, the Court has jurisdiction to
- > confirm
- > the award.

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- > [2]" Any party can apply to confirm an arbitration award falling under the
- > Convention within three years after the award is made, 9 U.S.C. @ 207.
- > Courts
- > have a limited role in reviewing arbitration awards and will confirm
- > awards
- > unless there are grounds for refusal to confirm, as specified under the
- > Convention. See *id.*; Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc., 126
- > F.3d
- > 15, 19 (2d Cir. 1997), cert. denied, 140 L. Ed. 2d 107, 118 S. Ct. 1042
- > (1998).
- > Article V of the Convention specifies those circumstances in which courts
- > have
- > grounds for refusal. See 9 U.S.C. @ 201. The burden is upon the party
- > opposing
- > the confirmation to provide a basis for the court to refuse confirmation.
- > Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du
- > Papier
- > (RAKTA), 508 F.2d 969, 973 (2d Cir. 1974). Respondents have not opposed
- > the
- > confirmation of this award, and therefore raise no grounds for the Court's
- > refusal to confirm the award.

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- > Article IV of the Convention states that "the party applying for
- > recognition
- > and enforcement shall, at the time of the application, [\*5] supply: (a)
- > The
- > duly authenticated original award or a duly certified copy thereof; (b)
- > The
- > original agreement referred to in article II or a duly certified copy
- > thereof."
- > 9 U.S.C. @ 201. Petitioners have supplied a copy of the award certified by
- > the
- > Director of the New York Regional Office of the American Arbitration
- > Association. "Copies of the award . . . which have been certified by a

> member of  
> the arbitration panel provide a sufficient basis upon which to enforce the  
> award." Bergesen, 710 F.2d at 934. Here, a director certified the award,  
> instead  
> of a panel member who heard the New York arbitration. Because the director  
> is an  
> objective party and is responsible for all arbitrations in the New York  
> Regional  
> Office, a copy of the award certified by the director is sufficient for  
> confirmation purposes.

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> [7] Petitioners have also supplied a copy of the Agreement, containing the  
> arbitration clause, certified by petitioners' attorney as a true copy. The  
> purpose for requiring the original or a certified copy of an agreement is  
> to  
> prove the existence of the Agreement, Al Haddad Bros. Enters., Inc. v. M/S  
> AGAPI  
> , 635 F. Supp. 205, 209 (D. Del. 1986), aff'd, 813 F.2d 396 (3d Cir. [\*6]  
> 1987), and no one disputes the existence of this Agreement. In furtherance  
> of  
> the Convention's purpose of encouraging recognition and enforcement of  
> international awards, see Scherk v. Alberto-Culver Co., 417 U.S. 506, 520  
> n.15,  
> 41 L. Ed. 2d 270, 94 S. Ct. 2449 (1974), the copy of the Agreement  
> certified by  
> petitioners' attorney is sufficient to satisfy the requirements of the  
> Convention. See Overseas Cosmos, Inc. v. NR Vessel Corp., 1997 U.S. Dist.  
> LEXIS  
> 19390, No. 97 Civ. 5898, 1997 WL 757041, at \*5 (S.D.N.Y. Dec. 8, 1997)  
> (holding  
> that a copy of the agreement certified by petitioner's solicitor, who  
> participated in the arbitration, is sufficient if the existence of the  
> agreement  
> is not disputed); Hewlett-Packard, Inc. v. Berg, 867 F. Supp. 1126, 1130  
> n.11  
> (D. Mass. 1994) (overlooking the failure to submit an original or  
> certified copy  
> when the agreement's validity was uncontested), vacated on other grounds,  
> 61  
> F.3d 101 (1st Cir. 1995).

> [8] Finally, "confirmation of a foreign arbitration award is proper . . .  
> if (1)  
> the party moving for confirmation of the arbitration award has complied  
> with the

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> requirements of the Convention; and (2) the party opposing the motion has  
> failed  
> to show the existence [\*7] of any of the grounds . . . that would bar  
> confirmation of the arbitration award." Montauk Oil Transp. Corp. v.  
> Steamship  
> Mutual Underwriting Ass'n (Bermuda) Ltd., 1995 U.S. Dist. LEXIS 8247, No.  
> 90  
> Civ. 3792, 1995 WL 361303, at \*1 (S.D.N.Y. June 16, 1995), aff'd, 79 F.3d  
> 295  
> (2d Cir. 1996). Petitioners have complied with all requirements under the  
> Convention and respondents have not opposed the motion to confirm the  
> arbitration award. Accordingly, the Court grants the motion and the award  
> is  
> confirmed. >>

> CONCLUSION

> For the foregoing reasons, petitioners' motion to confirm the  
> arbitration  
> award is granted. The Clerk of the Court shall enter judgment accordingly.

> SO ORDERED.

> Dated: New York, New York

> March 20, 1998

> DENNY CHIN

> United States District Judge

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