

1ST CASE of Level 1 printed in FULL format.

NITRON INTERNATIONAL CORPORATION, Plaintiff, -v- **GOLDEN PANAGIA MARITIME INC.**,
Defendant.

98 CIV 8718 (DLC)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

1999 U.S. Dist. LEXIS 5318

April 15, 1999, Decided

April 16, 1999, Filed

DISPOSITION: [*1] Nitron's motion for an order confirming an arbitrators' award of attorney's fees rendered in favor of petitioner, as well as the attorney's fees associated with this action granted. Arbitral award confirmed and judgment entered in the amount of \$ 3,500 plus interest.

COUNSEL: Alan Van Praag, Esq., Snow Becker Krauss P.C., New York, NY.

JUDGES: DENISE COTE, United States District Judge.

OPINIONBY: DENISE COTE

OPINION: OPINION & ORDER

DENISE COTE, District Judge:

Petitioner Nitron International Corporation ("Nitron") brought this motion pursuant to 9 U.S.C. § 207 to obtain an order confirming an arbitrators' award of attorney's fees rendered in favor of petitioner, as well as the attorney's fees associated with this action. Respondent Golden Panagia Maritime, Inc. ("GPM") has not responded to petitioner's motion. For the reasons stated below, the petitioner's motion is granted.

BACKGROUND

Nitron is a Connecticut corporation. GPM is a foreign corporation, and owner of the M/V Golden Panagia. n1 On October 1, 1990, Nitron entered into a charter party agreement (the "agreement") with GPM under which GPM agreed to transport a minimum of 20,000 metric tons of Bulk Urea from El Tablazo, Venezuela [*2] to Paita and Pisco, Peru.

n1 It is unclear under which country's laws GPM is

incorporated, or the M/V Golden Panagia is flagged.

A cargo shortage at Pisco resulted in an action brought by the cargo receivers against GPM before the Court of First Instance at Pisco. In the meantime, GPM contacted Nitron asserting that Nitron should be liable for any successful claim against GPM in Peru. Nitron contested the assertion that it was responsible for the shortage. The parties were unable to resolve the matter amicably, and pursuant to the agreement, the issue was referred to a three-person arbitration panel (the "panel") in New York. On February 18, 1998, the panel rendered a Partial Final Award declaring that GPM's claim was premature:

In order to succeed on the claim of indemnity, there must have been a payment based upon the adjudication of liability or a settlement. Since no payment was made or settlement reached with the receivers, the request for counter-security is premature.

The panel reserved [*3] the right to award attorney's fees and costs in its final award.

On May 12, 1998, GPM notified the panel that the cargo receivers' action against GPM in Peru had been dismissed, and that GPM considered the matter closed. Nitron, however, requested that the panel award to Nitron attorney's fees and costs associated with the arbitration. The parties agreed to accept a letter from the panel in lieu of further proceedings, and on August 12, 1998, the panel ordered GPM to pay Nitron \$ 3,500 in attorney's fees and costs. To date, GPM has not paid, despite repeated efforts by Nitron to collect payment. Nitron seeks an order confirming the panel's award and a judgment in the amount of \$ 3,500, plus attorney's fees incurred in bringing this motion. GPM has not opposed Nitron's motion.

DISCUSSION

1. The Standard

Whether to recognize and enforce an arbitration award is governed in the first instance in this case by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"), 9 U.S.C. §§ 201-208. The Convention requires contracting states such as the United States,

to recognize an agreement in writing under which the parties undertake to [*4] submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

Convention, Art. II(1). Under 9 U.S.C. § 202, this Court must engage in a four-step analysis to determine whether the Convention applies:

- (1) Is there an agreement in writing to arbitrate the subject of the dispute?
- (2) Does the agreement provide for arbitration in the territory of a signatory of the Convention?
- (3) Does the agreement arise out of a legal relationship, whether contractual or not, which is considered as commercial?
- (4) Is a party to the agreement not an American citizen, or does the commercial relationship have some reasonable relation to one or more foreign states?

Fun Atlantic Group, Inc. v. Republic Ins. Co., 878 F. Supp. 630, 638 (S.D.N.Y. 1995). See also Cargill Int'l S.A. v. M/T Pavel Dybenko, 991 F.2d 1012, 1018 (2d Cir. 1993).

Here, there is an agreement in writing to arbitrate that arises out of a commercial contractual relationship. The agreement provides that any arbitration should occur in [*5] the United States, a signatory to the Convention. The fourth step in the analysis is satisfied by virtue of GPM's status as a foreign corporation. The Court concludes that the four elements of the analysis are met and that the agreement is, therefore, governed by the Convention.

The confirmation of an arbitration award is a summary proceeding that converts a final arbitration award into a judgment of the court. *Ottley v. Schwartzberg, 819 F.2d 373, 377 (2d Cir. 1987)*. A Court shall confirm an arbitration award made under the Convention "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 Court may refuse recognition and enforcement of an award "at the request of the party against whom it is invoked, only if that party furnishes to the competent authority" proof of the existence of any one of five circumstances. Convention, Art. V(1). Because GPM has not contested Nitron's motion in this case, none of these grounds for refusal is relevant. Under the Convention, Article V(2), the Court may refuse to recognize an award upon its own finding that:

- b. the subject matter [*6] of the difference is not capable of settlement by arbitration under the law of the country where recognition is sought;
- c. the recognition or enforcement of the award would be contrary to the public policy of that country.

Convention, Art. V(2), reprinted at 9 U.S.C. § 201 note.

2. Subject Matter Capable of Settlement by Arbitration

The Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-14 (1988), governs arbitration in the United States and "reflects a legislative recognition of the desirability of arbitration as an alternative to the complications of litigation." *Genesco, Inc. v. T. Kakiuchi & Co., 815 F.2d 840, 844*. Section 2 of the FAA provides, in relevant part:

an agreement in writing to submit to arbitration an existing controversy . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2. This proceeding seeks confirmation of an arbitration award pursuant to the written agreement of the parties to arbitrate any controversy between them. This Court is not aware of any grounds for the revocation of this contract, and finds that the disputed [*7] subject matter is, therefore, capable of resolution by arbitration under the laws of the United States.

3. Contrary to Public Policy

The United States, as a signatory of the Convention, is in agreement with the central policy statement of the Convention, which is

to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries.

9. U.S.C. Sect. 202 reads:

Quote 202 in full

4 Reported in Yearbook 2 (1976) pp. 203-204 (US 710-9).
 7 " " 1X (1984) pp. 487-494 (US 710-54).
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 2 (1976) pp. 212-213 (US 710-3)
 2 (1976) p. 205 (US 710-7)

Scherk v. Alberto-Culver Co., 417 U.S. 506, 520 n. 15, 41 L. Ed. 2d 270, 94 S. Ct. 2449 (1974); see *Bergesen v. Joseph Muller Corp.*, 710 F.2d 928, 933 (2d Cir. 1983); *Fotochrome, Inc. v. Copal Co.*, 517 F.2d 512, 516 (2d Cir. 1975); *Parsons & Whittemore Overseas Co. v. Societe Generale de l'Industrie du Papier*, 508 F.2d 969, 973 (2d Cir. 1974). (This statement evidences a strong public policy in support of arbitration proceedings and enforcement of arbitration awards. A court should find that enforcement is contrary to public policy only where enforcement would violate our "most basic notions of morality and justice." *Fotochrome, Inc.*, 517 F.2d at 516; *Parsons & Whittemore*, 508 F.2d at 974. No understanding of the facts before this Court supports the notion that enforcement of this arbitration award would be violative of basic notions of morality and justice. Instead, the confirmation of this award is quite consistent with the stated policy of the United States, and other signatories of the Convention, to encourage the resolution of commercial disputes by arbitration.

4. Award of Attorney's Fees

[7] In the context of a motion to confirm an arbitration award, attorney's fees should be awarded if the party challenging the award has "refused to abide by the arbitrator's decision without justification." *International Chemical Workers Union, Local 227 v. BASF Wyandotte Corp.*, 774 F.2d 43, 47 (2d Cir. 1985). A party's failure to comply immediately with an arbitration award does not necessarily warrant an award of attorney's fees. *Great Atlantic and Pacific Tea Co. v. Local Union No. 338, Retail, Wholesale and Department Store*

Union, AFL-CIO, 1996 U.S. Dist. LEXIS 7207, 95 Civ. 5255, 1996 WL 282074, *3 (S.D.N.Y., May 28, 1996). However, where a party against whom an award is made refuses to pay or file a motion to vacate, there is [9] bad faith and attorney's fees should be awarded. In the matter of arbitration between *Soft Drink and Brewery Workers Union Local 812, IBT, AFL-CIO and Ali-Dana Beverages, Inc.*, 1996 U.S. Dist. LEXIS 10585, 95 Civ. 8081, 1996 WL 420209, *3 (S.D.N.Y., July 25, 1996).

[8] In this case, GPM has not complied with the decision of the arbitrators, nor has it contested the award in this or any other proceeding. The Court finds that GPM's refusal to pay the award is evidence of bad faith, and orders it to pay to Nitron attorney's fees to compensate Nitron for the cost of bringing this motion. 25

CONCLUSION

For the reasons stated, Nitron's motion is granted. The arbitral award is confirmed and judgment shall be entered in the amount of \$ 3,500 plus interest. Nitron's counsel shall submit to the Court a statement of reasonable attorney's fees billed for the preparation and filing of this motion within 10 days of the date of this Opinion.

SQ ORDERED:

Dated: New York, New York

April 15, 1999

DENISE COTE

United States District Judge

Section 202. Agreement or award falling under the Convention

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.