SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

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DORA'S NATURALS, INC.,

Petitioner-Cross-Respondent,

- v -

GUAYAKI SUSTAINABLE RAINFOREST PRODUCTS, INC.,

Respondent-Cross-Petitioner.

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INDEX NO. 657508/2019

MOTION DATE

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

HON. MARCY S. FRIEDMAN

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 17, 18, 19, 20, 21, 22, 23, 24, 25
were read on this motion to/for CONFIRM/VACATE AWARD.

Petitioner Dora's Naturals, Inc. (Dora's) brings a petition to confirm the Final Award, dated November 26, 2019, rendered by American Arbitration Association Commercial Arbitration Tribunal arbitrators Eugene I. Farber, Robert S. Smith, and Edna Sussman in the arbitration captioned Dora's Naturals, Inc. v Guayaki Sustainable Rainforest Products, Inc., Case No. 01-18-0002-8297. Respondent Guayaki Sustainable Rainforest Products, Inc. (Guayaki) seeks by cross-petition to modify the Final Award.

It is undisputed that in 2010, Dora's, a distributor of food products, and Guayaki, a manufacturer of organic beverages incorporating the yerba mate plant, entered into a 20 year distribution agreement by which Dora's was appointed the exclusive authorized distributor of all Guayaki products in the New York metropolitan area (with limited specified exceptions) (Distribution Agreement). (Final Award, at 5-6 [NYSCEF Doc. No. 24].) In 2018, Guayaki terminated the Distribution Agreement, without stating any reasons for the termination, but

stating that Dora's was not entitled to payment from Guayaki because the contract precluded recovery for consequential damages, including lost profits. (Id., at 11.)

The termination of the Distribution Agreement gave rise to the arbitration, at which the primary issue was Dora's entitlement to damages. (Id.) As noted by the arbitrators, and not disputed in this proceeding, Guayaki breached the Distribution Agreement by terminating the Agreement before its expiration without grounds. (See id.) After an eight-day evidentiary hearing and extensive briefing, the arbitrators awarded Dora's damages for lost profits in the amount of $4,998,000. (Id., at 39.) In support of this holding, the arbitrators reasoned that "whether analyzed under the case law relating to general damages or the case law relating to consequential damages, on the facts presented [at the arbitration], lost profits are recoverable." (Id., at 11.) As discussed further below, the arbitrators held that "any lost profits from a breach would be the 'natural and probable consequence of the breach,' as required for general damages." (Id., at 14 [citation omitted].) In the alternative, the arbitrators held that the lost profits claimed by Dora's would be recoverable if viewed as consequential damages rather than general damages. (Id., at 16-21.)

In seeking to modify the Final Award to vacate the award of damages, Guayaki argues that the arbitrators' holdings on damages were based on "manifest disregard of the law." (Resp.'s Memo., at 8-9 [NYSCEF Doc. No. 21].)[1] While questioning whether the manifest disregard standard is applicable to review of the Final Award, Dora's argues that respondent fails to meet that standard. (Pet.'s Memo., at 15 [NYSCEF Doc. No. 22].) Dora's also argues that no

[1] Respondent argues that the court should apply the Federal Arbitration Act (9 U.S.C. § 1 et seq.) in determining whether to confirm or vacate the Final Award because the subject matter of the arbitration affected interstate commerce, as Dora's is a New York company, Guayaki is a California company, and the Distribution Agreement covered distribution in three states. (Resp.'s Memo, at 9, n 2.)

grounds exist for vacating or modifying the Final Award pursuant to CPLR 7511. (Pet.'s Memo., at 20-21.)

As explained by the Court of Appeals, "[t]he FAA permits vacatur of an arbitration award on four grounds which all involve fraud, corruption or misconduct on the part of arbitrators. . . . In addition to these four grounds, an award may be vacated under federal law if it exhibits a 'manifest disregard of law.'" (Wien & Malkin LLP v Helmsley-Spear, Inc., 6 NY3d 471, 480 [2006], cert dismissed 548 US 940 [2006]; accord Matter of Daesang Corp. [v NutraSweet Co.], 167 AD3d 1, 15 [1st Dept 2018], lv denied 32 NY3d 915 [2019]; Sawtelle v Waddell & Reed, Inc., 304 AD2d 103, 108 [1st Dept 2003].) The manifest disregard doctrine is "severely limited" and a "doctrine of last resort limited to the rare occurrences of apparent egregious impropriety on the part of the arbitrators. . . ." (Wien & Malkin LLP, 6 NY3d at 480 [internal quotation marks and citation omitted].) This doctrine requires "more than a simple error in law or a failure by the arbitrators to understand or apply it; and, it is more than an erroneous interpretation of the law." (Id., at 481 [internal quotation marks and citation omitted]; accord Matter of Daesang Corp., 167 AD3d at 16.) In order to modify or vacate an award for manifest disregard of the law, the court must find "both 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." (Wien & Malkin LLP, 6 NY3d at 481 [internal quotation marks and citations omitted]; accord Matter of Daesang Corp. 167 AD3d at 16.)

Under New York law, a court may vacate an arbitration award "only on the grounds stated in CPLR 7511 (b)." (Matter of New York City Tr. Auth. [v Transport Workers Union of Am., Local 100, AFL-CIO], 6 NY3d 332, 336 [2005].) Insofar as relevant here, CPLR 7511 (b)

(1) (iii) provides that an award may be vacated on the ground that the arbitrator "exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made." As interpreted by the courts, this provision authorizes vacatur of an award "only where the [] award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power." (Id., at 336; accord Matter of Falzone [v New York Cent. Mut. Fire Ins. Co.], 15 NY3d 530, 534 [2010].) "Even where an arbitrator has made an error of law or fact, courts generally may not disturb the arbitrator's decision." (Falzone, 15 NY3d at 534.) A court must "give deference to the decision of the arbitrator . . . even if the arbitrator misapplied the substantive law in the area of the contract." (New York City Tr. Auth., 6 NY3d at 336 [internal quotation marks and citations omitted]; accord Falzone, 15 NY3d at 534.) "'That reasonable minds might disagree over what the proper penalty should have been does not provide a basis for vacating the arbitral award or refashioning the penalty.'" (Matter of Shenendehowa Cent. Sch. Dist. Bd. of Educ. [v Civil Serv. Empls. Assn., Inc., Local 1000, AFSCME, AFL-CIO, Local 864], 20 NY3d 1026, 1028 [2013], quoting City School Dist. of the City of N.Y. v McGraham, 17 NY3d 917, 920 [2011].)

The court holds that, under either standard, grounds do not exist for the vacatur of the damages awarded by the arbitrators. In concluding that Dora's was entitled to an award of lost profits, the arbitrators carefully considered, and rejected, Guayaki's argument that the lost profits were consequential damages, recovery for which was barred by the terms of the Distribution Agreement. (Resp.'s Memo., at 10-17; Final Award, at 12-16.)

More particularly, Guayaki argued that the lost profits were consequential, not general, damages because Dora's sought to recover not money that Guayaki owed under the Distribution Agreement but, rather, losses on unmade sales to customers who were not parties to the

Distribution Agreement. (Resp.'s Memo., at 15; Final Award, at 12.) In determining whether lost profits were recoverable as general damages, the arbitrators held that the Court of Appeals decision in Biotronik A.G. v Conor Medsystems Ireland, Ltd., 22 NY3d 799 [2014]) (Biotronik) "governs the question." (Final Award, at 12.) In Biotronik, the Court explained that "[l]ost profits may be either general or consequential damages, depending on whether the non-breaching party bargained for such profits and they are 'the direct and immediate fruits of the contract.' Otherwise, where the damages reflect a 'loss of profits on collateral business arrangements,' they are only recoverable when '(1) it is demonstrated with certainty that the damages have been caused by the breach, (2) the extent of the loss is capable of proof with reasonable certainty, and (3) it is established that the damages were fairly within the contemplation of the parties.'" (22 NY3d at 805-806 [internal citations omitted].) The Court applied these principles to an exclusive distribution contract, holding that lost profits are recoverable as general damages "where the nature of the agreement support[s] a conclusion that they flowed directly from the breach." (Id.)

Applying Biotronik, the arbitrators considered the terms of the Distribution Agreement and the nature of the relationship between Dora's and Guayaki, as reflected in that Agreement. They concluded that "the arrangement between Dora's and Guayaki mirrors in many ways the relationship between the manufacturer and distributor in Biotronik." (Final Award, at 13.) They further reasoned that, "as in Biotronik, the arrangement between Dora's and Guayaki was not simply one between the seller and a buyer who was in the business of reselling"; that the Distribution Agreement clearly contemplated that Dora's would resell Guayaki's product; and therefore that "any lost profits from a breach would be the natural and probable consequence of

the breach, as required for general damages." (Final Award, at 14 [internal quotation marks and citation omitted].)

The arbitrators also held, in the alternative, that if viewed as consequential damages, the lost profits claimed by Dora's would be recoverable. This holding required the arbitrators to construe the Distribution Agreement. They rejected Guayaki's argument that section 13 (C) of the Distribution Agreement bars consequential damages. (Resp.'s Memo., at 18.) Section 13 (C) provides: "Notwithstanding any other provisions of this Agreement, in no event shall either Party be liable to the other for incidental, special or consequential damages, or punitive damages." As noted by the arbitrators, section 13 (C) appears in the Indemnification Section of the Distribution Agreement. The Termination Section of the Agreement also contains a general provision on damages, section 10 (A), which provides in pertinent part: "A decision by either party to terminate this Agreement pursuant to this paragraph will not affect either party's right to seek damages against the other for a breach of the terms of this Agreement. . . . Nothing contained herein shall be deemed to limit either Party's right to obtain damages or equitable relief if either Party shall breach its obligations under this Agreement. All remedies shall be cumulative and are intended to be, and shall be non-exclusive." The arbitrators reasoned that "because the limitation on damages is nestled in the provisions relating to indemnification and because there is contrary and similarly phrased language relating to damages in Section Ten of the Distribution Agreement relating to termination the language in the specific provision relating to termination, which expressly provides for no limitation on rights to damages, governs." (Final Award, at 18 [internal quotation marks omitted].) The arbitrators also cited the Court of Appeals decision in Hooper Assocs., Ltd. v AGS Computers, Inc. (74 NY2d 487, 493 [1989]) for the proposition that "'[c]onstruing the indemnification clause as pertaining only to third-party suits

affords a fair meaning to all of the language employed by the parties in the contract and leaves no provision without force and effect.'" The arbitrators then analyzed the evidence to determine whether the recovery of lost profits was within the contemplation of the parties at the time of contracting, and concluded that it was. (Final Award, at 18-21.)

On the above authority, this court need not determine whether the arbitrators were correct in their application of the caselaw or assessment of the evidence. The arbitrators unquestionably considered the applicable law and rendered a well-reasoned opinion that does not manifestly disregard the law. Nor is it irrational.

The court has considered respondent's remaining contentions and finds them without merit.

It is accordingly hereby ORDERED that the petition to confirm the Final Award is granted to the following extent:

It is ORDERED that petitioner Dora's Naturals, Inc. is awarded judgment against respondent Guayaki Sustainable Rainforest Products, Inc. in the amount of $4,998,000.00, plus pre-award interest at the statutory rate from July 16, 2018 (the date of the breach) to November 26, 2019 (the date of the Final Award), as computed by the Clerk of the Court in the amount of $_____, plus interest at the statutory rate from November 26, 2019 to the date of this decision, as computed by the Clerk of the Court in the amount of $_____, together with costs and disbursements in the amount of $_____ as taxed by the Clerk, for the total amount of $_____, plus interest on the judgment at the statutory rate; and that petitioner have execution therefor; and it is further

ORDERED that respondent's cross-petition to vacate the Final Award is denied.

This constitutes the decision, order, and judgment of the court.

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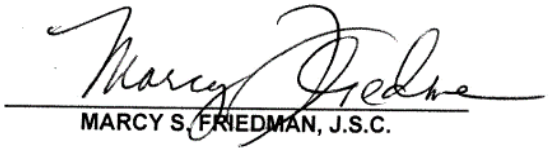

MARCY S. FRIEDMAN, J.S.C.

7/20/2020
DATE

CHECK ONE:	X	CASE DISPOSED			☐	NON-FINAL DISPOSITION	
	X	GRANTED	☐	DENIED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			☐	FIDUCIARY APPOINTMENT	☐ REFERENCE