



Power . . . breached the Subcontract by its failure to pay MasTec . . . .” (Petition Ex. B at 4.)

The final award granted MasTec the full relief demanded and rejected each of Premier Power’s contentions. The Arbitrator awarded MasTec: (i) \$1,964,419.56 in damages; (ii) \$707,191.04 in interest as of October 14, 2014; and (iii) \$324,448.84 in attorney’s fees and costs. (Petition ¶ 31; Ex. B.)

#### DISCUSSION

“Arbitration awards are not self-enforcing, [but] they must be given force and effect by being converted to judicial orders by courts; these orders can confirm and/or vacate the award, either in whole or in part.” D.H. Blair & Co. v. Gottdiener, 462 F.3d 95, 104 (2d Cir. 2006). Where the respondent fails to appear, a petition to confirm an arbitration award and any accompanying submissions are “treated as akin to [an unopposed] motion for summary judgment.” D.H. Blair, 462 F.3d at 109-10; Travel Wizard v. Clipper Cruise Lines, No. 06 Civ. 2074 (GEL), 2007 WL 29232, at \*2 (S.D.N.Y. Jan. 3, 2007) (stating that “even where one party altogether fails to respond to a motion to vacate or confirm an award . . . district courts should assess the merits of the record rather than entering a default judgment”).

Confirmation of an arbitration award is generally a “summary proceeding that merely makes what is already a final arbitration award a judgment of the court.” Florasynth, Inc. v. Pickholz, 750 F.2d 171, 176 (2d Cir. 1984). “[T]he court ‘must grant’ the award ‘unless the award is vacated, modified or corrected.’” D.H. Blair, 462 F.3d at 110 (quoting 9 U.S.C. § 9)); see also Duferco Int’l Steel Trading v. T. Klaveness Shipping A/S, 333 F.3d 383, 388 (2d Cir. 2003) (arbitration awards are entitled to great deference by the courts).

“The arbitrator’s rationale for an award need not be explained, and the award should be confirmed if a ground for the arbitrator’s decision can be inferred from the facts of the

case.” D.H. Blair, 462 F.3d at 110. “[A] barely colorable justification for the outcome reached” is all that is necessary to confirm the award. Landy Michaels Realty Corp. v. Local 32B-32J, Serv. Employees Int’l Union, 954 F.2d 794, 797 (2d Cir. 1992). “It is only when the arbitrator strays from interpretation and application of the agreement and effectively dispense[s] his own brand of industrial justice that his decision may be unenforceable.” Major League Baseball Players Association v. Garvey, 532 U.S. 504, 509 (2001); D.H. Blair, 462 F.3d at 110-11 (an arbitration award may be vacated on the grounds of manifest disregard of the law); see also Interdigital Comm. Corp. v. Nokia Corp., 407 F. Supp. 2d 522, 528 (S.D.N.Y. 2005) (“Section 10 of the [Federal Arbitration Act] sets forth the narrow circumstances under which judicial vacatur is appropriate.”); Banco de Seguros del Estado v. Mutual Marine Office, Inc., 344 F.3d 255, 260 (2d Cir. 2003) (a court may refuse to enforce an Arbitrator’s award because it is contrary to public policy); Westerbeke Corp. v. Daihatsu Motor Co., Ltd., 304 F.3d 200, 208 (2d Cir. 2002) (absent an arbitrator’s “manifest disregard of law,” an arbitration award must be confirmed on the timely application of a party).

The parties agree that this dispute is subject to binding arbitration. (Petition ¶ 13; Ex. A at § 20.2.) As such, the Arbitrator was empowered to assess damages arising from a breach of the Subcontract. Premier Power did not challenge any evidence introduced by MasTec and opted instead to submit a post-hearing brief. Premier Power advances four defenses to payment: (1) that certain MasTec change orders had not been approved by Premier Power, (2) that a “pay-when-paid” clause excused Premier Power from having to pay MasTec, (3) that a force majeure event excused Premier Power from its payment obligation to MasTec, and (4) that the arbitration should not have proceeded. (Petition Ex. L.) The Arbitrator addressed each of these arguments and found them unpersuasive. (Petition Ex. B.) His conclusions were

supported by the record and demonstrate no manifest disregard of the law.

Specifically, the Arbitrator found that MasTec incurred additional costs not contemplated in the Subcontract and submitted appropriate documentation of those costs. The Arbitrator determined that Premier Power acknowledged and approved those change orders. (Petition Ex. B.)

The Arbitrator also determined that the “pay-when-paid” clause did not excuse Premier Power from its obligation to pay MasTec. The Arbitrator determined that a “pay-when-paid” clause affords a general contractor a “reasonable” time to pay a subcontractor and that “three years [was] an unreasonable period of time to withhold payment from MasTec for its completed work.” (Petition Ex. B at 7.)

The Arbitrator also rejected Premier Power’s argument that the project owner’s failure to pay Premier Power in full constituted a “force majeure event.” Specifically, the Arbitrator found that “eleventh hour argument” to be without merit in the absence of prior notice. (Petition Ex. B. at 8.)

The Subcontract provided for an award of reasonable attorney’s fees and expenses to the prevailing party. (Petition Ex. A at § 20.2(f).) MasTec submitted appropriate documentation and the Arbitrator’s conclusion that those fees and costs were reasonable and appropriate is not manifestly wrong. Further, the Arbitrator enforced the Agreement’s provision for monthly interest of 1%. Because the agreement explicitly states this 1% rate applies, it should not be disturbed. See WKOB Communications, Inc. v. Ortiz Broadcasting Corp., No. 02 Civ. 3664 (LAK) (RLE), 2005 WL 556999, at \*5 (S.D.N.Y. Feb. 10, 2005) (“In New York, interest is calculated at the statutory rate of nine percent (9%) per year, CPLR § 5004, unless the contract provides a different rate.”).

Finally, there is no allegation suggesting corruption, fraud, or any other impropriety on the part of the Arbitrator. And confirmation of the award is not contrary to public policy. Accordingly, this Court grants MasTec's unopposed Petition to confirm the arbitration award. Because the arbitration award is for a sum certain, no further inquiry into damages is necessary, and judgment in the amount of \$1,964,419.56 in damages, \$324,448.84 in attorneys' fees, \$707,191.04 in interest as of the date of the Final Award, and a per diem interest rate of \$645.25 from the date of the Final Award will be confirmed. See Herrenknecht Corp. v. Best Road Boring, No. 06 Civ. 5106 (JFK), 2007 WL 1149122, at \*2 (S.D.N.Y. Apr. 16, 2007) (confirming arbitration award and judgment of specified sum stated in arbitration decision).

CONCLUSION

For the reasons stated above, the arbitration award in favor of Power Partners Mastec LLC is confirmed. Petitioner is directed to submit a judgment by February 25, 2015. The Clerk of the Court is directed to mark this case closed.

Dated: February 20, 2015  
New York, New York

SO ORDERED:

  
WILLIAM H. PAULEY III  
U.S.D.J.

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