

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES—GENERAL

Case No. CV 23-10196-MWF (JDEx)

Date: March 19, 2024

Title: Kutayba Y. Alghanim v. Bassam Y. Alghanim

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:
Rita Sanchez

Court Reporter:
Not Reported

Attorneys Present for Plaintiff:
None Present

Attorneys Present for Defendant:
None Present

Proceedings (In Chambers): ORDER GRANTING PETITION TO CONFIRM FOREIGN ARBITRATION AWARD AND ENTRY OF JUDGMENT; AND MOTION FOR INTEREST, COSTS, AND ATTORNEYS' FEES [1]

Before the Court is a petition to confirm a foreign arbitration award and entry of judgment; and a motion for interest, costs, and attorneys' fees filed by Petitioner Kutayba Y. Alghanim on December 4, 2023. (Docket No. 1). Respondent Bassam Y. Alghanim filed an Opposition on February 5, 2024. (Docket No. 35). Petitioner filed a Reply on February 12, 2024. (Docket No. 37).

The Court held a hearing on March 4, 2024.

The Motion is **GRANTED**. Respondent's ostensible desire to resolve the dispute through mediation is not a reason to deny the petition or the request for attorneys' fees.

I. BACKGROUND

Petitioner alleges the following facts:

On March 27, 2008, the parties entered into an agreement, known as the Memorandum of Understanding ("MoU"), regarding the termination of their business partnership and separation of shared assets. (Docket No. 1 ¶ 8). The MoU is governed by the laws of Kuwait and contains an arbitration clause providing that any dispute

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“related to the subject matter of this agreement” would be “finally decided by H.H. Sheikh Nasser Mohammed al-Ahmed al-Jaber Al-Sabah.” (*Id.*)

In December 2013, the parties agreed to replace the arbitration clause contained within the MoU with a separate Arbitration Agreement, pursuant to which the parties commenced the Arbitration in December 2013. (*Id.* ¶ 9). The Arbitration is being conducted in Geneva, Switzerland and in accordance with the 2012 Rules of Arbitration of the International Chamber of Commerce. (*Id.*) To date, the Tribunal has resolved numerous disputes in the Arbitration, which has resulted in a total of seven partial final awards. (*Id.*) The present petition concerns solely the Seventh Award.

On July 12, 2023, the Tribunal issued the Seventh Award, which ordered that Respondent pay Petitioner certain cash and enumerated expenses totaling KD 9,616,622 or \$31,360,254.36 by October 12, 2023. (*Id.* ¶ 10). Respondent has failed to pay any amount pursuant to the Seventh Award.

Petitioner then moved to confirm the foreign arbitration award in this Court. Petitioner asks that, in addition to the amount pursuant to the Seventh Award, the Court further award both post-award, pre-judgment interest; post-judgment interest in connection with the Seventh Award; costs incurred in bringing the present action; and attorney’s fees.

Respondent does not dispute the validity or enforceability of the Award but states that the only issues in dispute are the form and timing of payment to satisfy the Award. (Opposition at 1). Respondent requests that the Court direct the parties to undertake mediation to attempt to reach a mutually agreeable payment plan. (*Id.*). Additionally, Respondent requests that the Court deny Petitioner’s request for attorneys’ fees and post-award, pre-judgment interest. (*Id.* 2–3).

II. DISCUSSION

“A petitioner seeking the confirmation of a foreign arbitral award satisfies its burden by submitting copies of (1) the award and (2) the agreement to arbitrate.”

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*Pharmaniaga Berhad v. E*HealthLine.com, Inc.*, 344 F. Supp. 3d 1136, 1141 (E.D. Cal. 2018) (citing 21 U.S.T. 2517, Art. IV.). Petitioner has met this burden by submitting the Arbitration Agreement entered into by the parties on December 5, 2013, and the Seventh Partial Award issued by the Tribunal on July 12, 2023. (Docket Nos. 1-6, 1-8).

Under the Convention, a district court ‘shall’ confirm a foreign arbitration award unless the party opposing confirmation can establish one of the defenses enumerated in Article V of the Convention.” *BU8 Sdn. Bhd. V. CreAgri, Inc.*, 2015 WL 1010090, at *3 (citing 9 U.S.C. § 207). Here, Respondent does not argue a defense nor dispute the validity or enforceability of the Award. (*See* Opposition). Therefore, the Court shall confirm the arbitration award.

A district court has discretion to award attorney’s fees in an action to confirm an arbitration award under the Convention. *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665 F.3d 1091, 1094 (9th Cir. 2011). “[F]ederal courts have authority to award attorney’s fees when the losing party has acted in bad faith, vexatiously, wantonly or for oppressive reasons.” *Id.* at 1104. “Generally, when a defendant simply refuses to pay an arbitration award and forces the plaintiff to file a petition to confirm the award, courts grant attorney’s fees based on a finding of bad faith.” *Gen. Marine II, LLC v. Kelly*, No. 3:21-CV-1425-W-DEB, 2022 WL 4488003, at *2 (S.D. Cal. Sept. 27, 2022) (citing cases); *Int’l Union of Petroleum & Indus. Workers v. W. Indus. Maint., Inc.*, 707 F.2d 425, 428 (9th Cir. 1983) (“[B]ad faith may be demonstrated by showing that a defendant’s obstinacy in granting a plaintiff his clear legal rights necessitated resort to legal action with all the expense and delay entailed in litigation.”).

Petitioner contends that he has repeatedly requested timely payment since the Seventh Award was issued, and that Respondent has repeatedly declined to timely pay the Seventh Award, forcing Petitioner to bring the present action. Respondent states that he has been trying to liquidate his assts and to establish a payment plan with Petitioner. (Opposition at 4–8, Docket Nos. 1-11, 1-12). But, according to Petitioner, Respondent has not paid anything to date, which goes against Respondent’s claims of

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engaging in good faith efforts and illustrates that Respondent’s withholding of payment is “unjustified.” (Reply at 7–10).

At the hearing, Respondent argued that cases finding bad faith involved respondents who had refused to pay for years. The Court disagrees. In *Sheet Metal Workers’ Int’l Ass’n Loc. Union No. 359 v. Madison Indus., Inc. of Arizona*, the Ninth Circuit affirmed in award for attorney’s fees when the respondent failed to comply with award after a little over a month. 84 F.3d 1186, 1189 (9th Cir. 1996); *see also Gen. Marine II, LLC*, 2022 WL 4488003, at *3 (awarding attorney fees when respondent brought the action to confirm the award four and a half months after the award was issued).

“[F]ederal law allows a district court to award post-award, prejudgment interest in actions under the New York Convention.” *Cubic Def. Sys., Inc.*, 665 F.3d at 1103. The purpose of awarding prejudgment interest is to compensate a party “for the loss of use of money due as damages from the time the claim accrues until judgment is entered.” *Schneider v. Cty. of San Diego*, 285 F.3d 784, 789 (9th Cir. 2002). “Courts presume that post-award, prejudgment interest is ‘appropriate’ absent a persuasive showing to the contrary.” *Purus Plastics GmbH v. Eco-Terr Distrib., Inc.*, No. C18-0277JLR, 2018 WL 3064817, at *10 (W.D. Wash. June 21, 2018). The Ninth Circuit generally uses “the interest rate prescribed for post-judgment interest under 28 U.S.C. § 1961 . . . for fixing the rate of pre-judgment interest.” *Asdale v. Int’l Game Tech.*, 763 F.3d 1089, 1093 (9th Cir. 2014). The Court rejects Respondent’s argument against post-award, prejudgment interest for the same reason the Court rejects his argument against attorneys’ fees. Neither party addresses an appropriate rate of prejudgment interest. This Court thus applies the rate from 28 U.S.C. § 1961(a) to the KD 9,616,622 award from October 12, 2023, to the date of judgment.

“Post-judgment interest on a district court judgment is mandatory per 28 U.S.C. § 1961.” *Lagstein v. Certain Underwriters at Lloyd’s of London*, 725 F.3d 1050, 1056 (9th Cir. 2013). The plain language of 28 U.S.C. § 1961, provides that “[i]nterest shall be allowed on any money judgment in a civil case recovered in a district court.” *Cubic Def. Sys., Inc.*, 665 F.3d at 1102 (quoting 28 U.S.C. § 1961(a)). Post-judgment interest

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should be awarded on the entire amount of the judgment, including any pre-judgment interest. *Air Separation, Inc. v. Underwriters at Lloyd’s of London*, 45 F.3d 288, 291 (9th Cir.1995)). Petitioner is therefore entitled to post-judgment interest on the entire amount of the judgment. “Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.” *Id.* at 290.

Petitioner shall file a motion pursuant to Rule 54(d) to address the amount of the attorneys’ fees and other costs he seeks by **April 8, 2024**. “That motion need not address [Petitioner’s] entitlement to [attorneys’] fees, which is established by this Order.” *Pharmaniaga Berhad*, 344 F. Supp. 3d at 1146. After determining those amounts, the Court will enter final judgment.

It takes two parties to reach a successful settlement. If Petitioner desires to do so, the parties are free to attempt mediation between now and April 8, 2024, or thereafter. If both parties request a continuance of the April 8th deadline, then the Court will almost certainly agree to that. However, this Court will not order mediation if Petitioner is unwilling.

IT IS SO ORDERED.