

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS

JUL 10 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LIHUA SONG,

Plaintiff - Appellee,

v.

WENBIN QUE, AKA Chee Hon Lee,

Defendant - Appellant,

and

XIAOLAN HE, SHIXIN LIN,

Defendants.

No. 24-4129

D.C. No.

3:23-cv-02159-RFL

MEMORANDUM\*

LIHUA SONG,

Plaintiff - Appellee,

v.

WENBIN QUE, AKA Chee Hon Lee,

Defendant - Appellant.

No. 24-4980

D.C. No.

3:23-cv-02159-RFL

Appeal from the United States District Court  
for the Northern District of California  
Rita F. Lin, District Judge, Presiding

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Submitted July 8, 2025\*\*  
San Francisco, California

Before: H.A. THOMAS and DE ALBA, Circuit Judges, and RAKOFF, District Judge.\*\*\*

Wenbin Que appeals the district court’s order granting a petition to confirm a foreign arbitration award (“Award”) in Lihua Song’s favor. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”), June 10, 1958, 21 U.S.T. 2517, provides the exclusive grounds upon which we may refuse to confirm a foreign arbitration award. N.Y. Convention, art. V. Our review of a foreign arbitration award is “quite circumscribed—[r]ather than review the merits of the underlying arbitration, we review de novo only whether the party established a defense under the [New York] Convention.” *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys.*, 665 F.3d 1091, 1103 (9th Cir. 2011) (quotation marks omitted). Any “defenses are construed narrowly, and the party opposing

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\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

recognition or enforcement bears the burden of establishing that a defense applies.”  
*Id.* at 1096.

1. The district court did not err in its determination that Que failed to present a defense under Article V(1)(a) of the New York Convention. The parties agreed that the validity of the Income Guarantee Agreement (“Agreement”) would be determined by the Chengdu Arbitration Commission, and that such a determination would be “final and binding upon the parties.” An arbitral tribunal from the Chengdu Arbitration Commission found that there were no Chinese laws regarding contract formation or stock transfers that invalidated the Agreement. *Cf. E. Associated Coal Corp. v. United Mine Workers of Am.*, 531 U.S. 57, 62 (2000) (stating that when parties have “bargained for the arbitrator’s construction of their agreement,” “courts will set aside the arbitrator’s interpretation of what their agreement means only in rare instances” (internal citation and quotation marks omitted)).

2. The district court did not err in its determination that Que failed to present a defense under Article V(1)(b) of the New York Convention. *See* N.Y. Convention, art. V(1)(b) (court may refuse to confirm award when “[t]he party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings”). Que’s argument that he lacked notice of the first arbitration hearing, and of the arbitral tribunal’s composition, is

refuted by evidence in the record that the hearing materials were properly mailed to his place of residence.

3. The district court did not err in its determination that Que failed to present a defense under Article V(2)(b) of the New York Convention, which applies only when an award's confirmation "would violate the forum state's most basic notions of morality and justice." *Ministry of Def. & Support*, 665 F.3d at 1097 (quoting *Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier (RAKTA)*, 508 F.2d 969, 974 (2d Cir. 1974)). Although one arbitrator's conduct during the second arbitral hearing reflected a concerning lack of attention, Que failed to show that enforcing the Award would violate United States public policy since (1) Que never objected to the arbitrator's conduct during the hearing or within the four-month period between the hearing and the Award; (2) the remaining two arbitrators were attentive to the parties; and (3) Que was given the opportunity to provide supplemental written testimony following the hearing. *See Marino v. Writers Guild of Am., E., Inc.*, 992 F.2d 1480, 1484 (9th Cir. 1993) ("[I]t is well settled that a party may not sit idle through an arbitration procedure and then collaterally attack that procedure on grounds not raised before the arbitrators when the result turns out to be adverse.").

**AFFIRMED.**

## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

### Information Regarding Judgment and Post-Judgment Proceedings

#### Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

#### Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate electronic filing system or, if you are a pro se litigant or an attorney with an exemption from the electronic filing requirement, file one original motion on paper.

#### Petition for Panel Rehearing and Petition for Rehearing En Banc (Fed. R. App. P. 40; 9th Cir. R. 40-1 to 40-4)

##### (1) Purpose

##### A. Panel Rehearing:

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - A material point of fact or law was overlooked in the decision;
  - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

##### B. Rehearing En Banc

- A party should seek en banc rehearing only if one or more of the following grounds exist:
  - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
  - The proceeding involves a question of exceptional importance; or

- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing or rehearing en banc must be filed within 14 days after entry of judgment. Fed. R. App. P. 40(d).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(d).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-4.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.
- Attorneys must file the petition electronically via the appellate electronic filing system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.

### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms* or by telephoning (415) 355-8000.

### **Petition for a Writ of Certiorari**

- The petition must be filed with the Supreme Court, not this Court. Please refer to the Rules of the United States Supreme Court at [www.supremecourt.gov](http://www.supremecourt.gov).

### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista, [maria.b.evangelista@tr.com](mailto:maria.b.evangelista@tr.com));
  - **and** electronically file a copy of the letter via the appellate electronic filing system by using the Correspondence filing category, or if you are an attorney exempted from electronic filing, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 10. Bill of Costs**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

**9th Cir. Case Number(s)**

**Case Name**

The Clerk is requested to award costs to *(party name(s))*:

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

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