

ICC Issues Award For Sweeteners Plus In Dispute Over \$7 Million Escrow

NEW YORK — The International Chamber of Commerce (ICC) International Court of Arbitration on Feb. 17 issued an award in favor of a sweetener processor and distributor, finding that New York law applied to the dispute and that a Panamanian entity was bound by the terms of a contract for the shipment of sugar (Sweeteners Plus Inc. v. Archangel World Investment Inc., No. 18497/VRO/AGF, ICC).

(Award available. Document #05-140325-013A.)

Sugar Shipment

In February 2012, Sweeteners Plus Inc., a New York-based processor and distributor of sweeteners, filed a request for arbitration with the ICC against Archangel World Investment Inc. (AWI).

Fastforward, a division of 1411347, Ontario Limited, Sweeteners Plus and AWI entered into an agreement for a shipment of sugar, which would be supplied by AWI, a Panamanian company. AWI did not deliver the sugar. Sweeteners submitted that more than \$7 million was placed in an escrow account for the payment of the shipment.

AWI asserted that its employee Hector Manuel Ortiz Garcia lacked the authority to make the sale and could not remove the funds from the escrow account.

Arbitration

Sweeteners sued AWI, Garcia and others in the U.S. District Court for the Middle District of Florida pursuant to Rule B of the Supplemental Admiralty and Maritime Claims of the Federal Rules of Civil Procedure. Sweeteners asserted that a house purchased by Garcia with the escrowed funds was encumbered by a *lis pendens*. AWI did not appear in the case.

Sweeteners then submitted its request for ICC arbitration. AWI argued that there was no valid contract between it and Sweeteners because its employee, Garcia, lacked the authority to bind AWI to the contract. AWI alleged that Garcia acted without the authority when he agreed to buy the sugar. AWI submitted that those whose authorization was required under Panamanian law were not aware of the contract.

Sweeteners alleged that pursuant to Canadian, English and U.S. law, the arbitration clause in Article 18 of the agreement was valid due to the existence of a valid assignment agreement between Fastforward and AWI.

Award

A sole arbitrator for the ICC issued an award in favor of Sweeteners, finding that AWI was bound by the terms of the sugar sale contract. Arbitrator Georgina Fabian found that Garcia acted with authority.

Sweeteners argued that the ICC should apply New York law to the dispute because that was the jurisdiction that had the most distinct relationship to the dispute. AWI argued that the ICC should conduct a choice of law analysis under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which would direct the application of Panamanian law.

Fabian found that New York law applied to the dispute because that is where the misconduct occurred.

Counsel

Sweeteners is represented by Vincent M. DeOrchis, Kaspar Kielland, Rimma Tsvasman and Jennifer Canfield of Montgomery McCracken Walker & Rhoads in New York.

AWI is represented by Robert L. Soza Jr. of Jackson Walker in San Antonio.