

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CHURCH INSURANCE COMPANY,

Petitioner,

-v-

ACE PROPERTY & CASUALTY INSURANCE
COMPANY,

Respondent.

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No. 10 Civ. 698 (RJS)
MEMORANDUM AND ORDER

RICHARD J. SULLIVAN, District Judge:

The Church Insurance Company (“Church”) brings this petition to confirm an arbitration award (the “Final Award”) against ACE Property & Casualty Insurance Company (“ACE”), pursuant to 9 U.S.C. § 9. ACE “has no objection to confirmation of the Final Award, with the understanding that the award would not be attached to, or summarized in, the confirmation order.” (Resp’t Letter dated Feb. 12, 2010, at 2.) ACE also requests that the Court seal various documents filed by Church in this case, alleging that they violate a confidentiality agreement between the parties. For the following reasons, the petition is granted, the Final Award is confirmed, and ACE’s sealing request is denied without prejudice to renewal.

I. BACKGROUND

Church, a New York corporation, entered into a reinsurance treaty with ACE, then known as The Aetna Insurance Company, which was effective from 1965 to 1978. (Pet. to Confirm Arbitration Award ¶ 7.) The treaty contained an arbitration clause. (*Id.* ¶ 8.) In 2006, Church initiated arbitration seeking payment from ACE of what they claimed were outstanding

balances due under the treaty. (*Id.* ¶ 10.) By stipulation, the parties convened a three-member arbitration panel, consisting of Ralph C. Hemp, ACE’s appointed arbitrator; John D. Cole, appointed by Church; and Robert M. Mangino, umpire. (*Id.* ¶ 12.) The panel held hearings in October 2008 and January 2009, and, on January 31, 2009, issued the Final Award, finding Church was entitled to a set amount of money.¹ (*Id.* ¶ 13, 14)

Church filed its petition to confirm the award on January 28, 2010. This case was originally assigned to the docket of the Hon. Deborah A. Batts. It was reassigned to my docket on August 10, 2010.

II. LEGAL STANDARD

“Normally, confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court, and the court must grant the award unless the award is vacated, modified, or corrected.” *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 110 (2d Cir. 2006) (citations and internal quotation marks omitted); *see also Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 582 (2008) (“Under the terms of § 9, a court ‘must’ confirm an arbitration award ‘unless’ it is vacated, modified, or corrected ‘as prescribed’ in §§ 10 and 11.”) “The arbitrator’s rationale for an award need not be explained, and the award

¹ While the amount of the Final Award was included in Church’s submissions, the Court has refrained from stating it here in the belief that ACE will renew its request that the Court seal those documents. *See* Part IV. If ACE does not renew its sealing request or the Court denies ACE’s motion, the Court will file an amended version of this Order containing the dollar value of the Final 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 (internal quotation marks omitted).

However, even where the petition is unopposed, a court must still treat the petition "as akin to a motion for summary judgment." *Id.* at 109-110; *see also New York City Dist. Council of Carpenters Pension Fund v. Carroll*, No. 09 Civ. 3207 (WHP), 2010 WL 3199673, at *1 (S.D.N.Y. Aug. 12, 2010). The facts must show that the petitioner is entitled to judgment as a matter of law. *D.H. Blair*, 462 F.3d at 110.

III. DISCUSSION

There is no basis for vacating, modifying, or correcting the Final Award. Accordingly, the Court will confirm it. "[T]he FAA sets forth the 'exclusive' grounds for vacating an arbitration award." *Stolt-Nielsen SA v. AnimalFeeds Int'l Corp.*, 548 F.3d 85, 95 (2d Cir. 2008), *rev'd and remanded on other grounds*, 130 S.Ct. 1758 (2010). Specifically, the Act allows vacatur of an arbitral award:

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a). The Second Circuit has also “recognized that the district court may vacate an arbitral award that exhibits a ‘manifest disregard’ of the law.” *Stolt-Nielsen*, 548 F.3d at 91 (quoting *Duferco Int’l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 388 (2d Cir. 2003)).

This petition is unopposed and there is sufficient evidence in the record to grant it. The arbitration procedure outlined in the treaty document was followed. There is no evidence in the record that the award was procured by corruption, fraud, or undue means; that any or all of the arbitrators were partial or corrupt; that the arbitrators were guilty of any misbehavior prejudicing the rights of any party; that the arbitrators exceeded or imperfectly executed their powers; or that there was a manifest disregard of the law. Therefore, the Court grants the petition and confirms the Final Award.

IV. SEALING

In a letter dated February 12, 2010, ACE, claiming that Church’s Petition to Confirm Arbitration Award (the “Petition”) and Memorandum of Law in Support of Petition to Confirm Arbitration Award (the “Memorandum”) were filed in violation of a confidentiality agreement between the parties, requested that the Court order that the Petition and Memorandum be filed under seal and replaced with redacted versions. ACE renewed its request in a letter dated September 15, 2010.

“The common law right of public access to judicial documents is firmly rooted in our nation’s history.” *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006). Without access to such documents, it is impossible for the public to perform their essential role

in monitoring judicial proceedings. *Id.* (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995). “The Second Circuit has articulated a three-step process for determining whether documents should be placed under seal.” *Mut. Marine Office, Inc. v. Transfercom Ltd.*, No. 08 Civ. 10367 (PGG), 2009 WL 1025965, at *4 (S.D.N.Y. Apr. 15, 2009).

First, a court must determine whether the presumption of access attaches. A presumption of access attaches to any item that constitutes a “judicial document”—i.e., an “item . . . relevant to the performance of the judicial function and useful in the judicial process.” Second, if the court determines that the item to be sealed is a “judicial document,” the court must then determine the weight of the presumption of access. “[T]he weight to be given the presumption of access must be governed by the role of the material at issue in the exercise of Article III judicial power and the resultant value of such information to those monitoring the federal courts.” “Generally, the information will fall somewhere on a continuum from matters that directly affect an adjudication to matters that come within a court’s purview solely to insure their irrelevance.” Finally, after determining the weight of the presumption of access, the court must “balance competing considerations against it.” “Such countervailing factors include but are not limited to the danger of impairing law enforcement or judicial efficiency and the privacy interests of those resisting disclosure.”

Id. (quoting *Lugosch*, 435 F.3d at 119, 120) (citations omitted). “The burden of demonstrating that a document submitted to a court should be sealed rests on the party seeking such action” *DiRussa v. Dean Witter Reynolds Inc.*, 121 F.3d 818, 826 (2d Cir. 1997).

ACE, the party requesting that the Court seal the Petition and Memorandum, has not addressed the application of these factors. Clearly, the Petition and Memorandum are judicial documents that directly affected the Court’s adjudication of this case. *See Mut. Marine Office*, 2009 WL 1025965, at *5; *see also Global Reinsurance Corp. - U.S. Branch v. Argonaut Ins. Co.*, Nos. 07 Civ. 8196 (PKC), 07 Civ. 8350 (PKC), 2008 WL 1805459, at *1-2 (S.D.N.Y. Apr. 24,

2008). As a competing consideration, ACE argues merely that disclosure “is inconsistent with, and would undermine the objectives of the parties’ Confidentiality Agreement and the reinsurance arbitration process in general.” (Resp’t Letter dated Sept. 15, 2010, at 1.) The “mere existence of a confidentiality agreement,” however, does not demonstrate that sealing is necessary. *See Mut. Marine Office*, 2009 WL 1025965, at *5.

Accordingly, ACE’s request that the Court seal the Petition and Memorandum and order Church to file redacted versions of the same is denied without prejudice. If ACE wishes to renew its request, it may e-mail a letter brief to my chambers by September 30, 2010 explaining how, in this case, “closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Lugosch*, 435 F.3d at 120. If ACE chooses to renew its request, Church may submit an opposition brief, also via e-mail, by October 7, 2010.

V. CONCLUSION

For the reasons explained above, the petition is granted, the Final Award is confirmed, and ACE’s sealing request is denied without prejudice to renewal. The Clerk is respectfully requested to terminate the motion listed at Doc No. 3 and close this case.

SO ORDERED.

Dated: September 22, 2010
New York, New York


RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

* * *

Petitioner is represented in this action by Eleftherios Stefas, Esq., Maryann Taylor, Esq., and Michael T. Walsh, Esq., Boundas Skarzynski Walsh & Black, LLC, 1 Battery Park Plaza, New York, New York 10004. Respondent is represented by Andrew I. Hamelsky, Esq., White & Williams, LLP, One Penn Plaza, 250 West 34th Street, Suite 4110, New York, New York 10119.