



1 Appeal from the United States District Court for the Southern District of New York  
2 (Barbara S. Jones, *Judge*).

3 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND  
4 DECREED that the May 17, 2012 judgment of the district court is AFFIRMED.

5 Respondent-appellant InfoKall, Inc. appeals from the judgment of the district court  
6 affirming an arbitration award in favor of petitioner-appellee Data & Development, Inc.  
7 (“D&D”). InfoKall argues that the arbitrator manifestly disregarded New York law by  
8 awarding lost profits to D&D without sufficient evidence. We disagree.

9 When reviewing a district court’s decision to confirm an arbitration award, we review  
10 questions of law de novo and findings of fact for clear error. Telenor Mobile Commc’ns AS  
11 v. Storm LLC, 584 F.3d 396, 408 (2d Cir. 2009). We will vacate an arbitration award for  
12 manifest disregard of the law only if the arbitrator ignored or improperly applied clear and  
13 explicitly applicable law to the matter before it, leading to an erroneous outcome. T. Co.  
14 Metals, LLC v. Dempsey Pipe & Supply, Inc., 592 F.3d 329, 339 (2d Cir. 2010). When an  
15 arbitrator does not explain its decision, “we will confirm it if a justifiable ground for the  
16 decision can be inferred from the facts of the case.” Id. (internal quotation marks omitted).

17 Here the arbitrator issued its award without explanation, as the parties themselves had  
18 expressly requested, but we can infer from the award amount that it granted D&D five years  
19 of lost profits, minus the amount D&D owed InfoKall for its own breach. Such a calculation  
20 is consistent with evidence presented at the hearing, including the testimony of D&D’s  
21 principal, of lost profits from InfoKall’s breach. New York law allows for recovery of lost

1 profits in actions for breach of contract, as long as they are proven with reasonable certainty.  
2 See Kenford Co. v. Erie County, 67 N.Y.2d 257, 261 (1986). Since New York law does not  
3 absolutely prohibit such damages, we cannot say that the arbitrator’s decision was in  
4 manifest disregard of this rule. InfoKall’s argument amounts to an attack on the arbitrator’s  
5 decision to credit D&D’s witness. But we apply the manifest disregard of the law standard  
6 to the facts of the case, “*as those facts have been determined by the arbitrator.*” Westerbeke  
7 Corp. v. Daihatsu Motor Co., 304 F.3d 200, 213 (2d Cir. 2002) (emphasis in original). An  
8 arbitration award may not be vacated because of disagreement with the arbitrator’s  
9 evaluation of the evidence.

10 For the foregoing reasons, the judgment of the district court is AFFIRMED.

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12 FOR THE COURT:  
13 Catherine O’Hagan Wolfe, Clerk of Court  
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