APPENDIX

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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 21-3039

ANDES PETROLEUM ECUADOR LTD.,
Petitioner-Appellee,
v.
OCCIDENTAL EXPLORATION & PRODUCTION COMPANY,
Respondent-Appellant.

Filed: June 15, 2023

Before: Raymond J. Lohier, Jr., Steven J. Menashi, and Beth Robinson, *Circuit Judges*.

SUMMARY ORDER

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED in part and VACATED in part.

Occidental Exploration and Production Company ("OEPC") appeals from a judgment of the United States District Court for the Southern District of New York (Hellerstein, J.) that (1) denied its motion to vacate an arbitration award, (2) granted a motion by Andes Petroleum Ecuador Limited ("Andes") to

confirm the arbitration award, and (3) awarded pre-judgment interest. We assume the parties' familiarity with the underlying facts and the record of prior proceedings, to which we refer only as necessary to explain our decision to affirm in part and vacate in part.

I. Background

In 1999 OEPC entered into a contract with an arm of the Ecuadorian government to carry out hydrocarbon development in the Ecuadorian Amazon Region. In 2000 OEPC and Andes entered into two agreements in which OEPC assigned to Andes an interest in the rights to the development project. In 2006 the parties amended one of those agreements by entering into a separate letter agreement. Following a dispute implicating the terms of the letter agreement, Andes commenced an arbitration proceeding against OEPC in 2016. Consistent with the parties' agreements and the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules") that were incorporated therein, each party "appoint[ed] an arbitrator of its choice" to a three-person tribunal, and the "party-appointed arbitrators . . . appoint[ed] a presiding arbitrator." Joint App'x 189. Andes appointed Richard Ziegler, OEPC appointed Robert Smit, and together, Zeigler and Smit appointed James Hosking to chair the tribunal.

The parties' agreement and the applicable AAA Commercial Arbitration Rules required all arbitrators to be "wholly independent and impartial." Joint App'x 189; *see* Joint App'x 209. The AAA Rules and the arbitrator oath required by the parties' agreements

mandated disclosure of "any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence." Joint App'x 208; *see also* Joint App'x 239. These disclosure obligations continued throughout the arbitration.

During the arbitrator selection process, Smit disclosed that he had a professional connection to one of Andes's counsel, Laurence Shore, from an unrelated prior arbitration and arbitration conferences. In 2018, after the OEPC Andes arbitration panel was constituted, Smit and Shore were both appointed to a tribunal in a separate, unrelated arbitration. Neither Smit nor Shore disclosed their appointment, although it was listed publicly online. The OEPC-Andes arbitration resulted in an arbitral award in favor of Andes in the amount of $391,879,747, plus interest and the costs of the arbitration proceedings.

OEPC contends that Smit and Shore "secretly maintained a close, direct relationship as co-equals in a confidential arbitration that gave Shore a behind the-scenes look at Smit's decision-making process, inside information on his views about specific contract doctrines, and ample opportunity for *ex parte* communication, collegial discussions, and collaborative decision-making." Appellant's Br. 17. OEPC alleges that this violated the Federal Arbitration Act (FAA) because of Smit's "evident partiality," 9 U.S.C. § 10(a)(2), and because Smit "exceeded [his] powers," *id.* § 10(a)(4). OEPC also argues that the undisclosed relationship prevents confirmation of the award under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V, § 1(d), June 10, 1958, 21 U.S.T. 2517,

330 U.N.T.S. 38 ("Convention") (as applied through the FAA, 9 U.S.C. §§ 201-08), because the arbitration panel was not constituted in accordance with the parties' agreements.

The District Court denied OEPC's motion to vacate and confirmed the award. It then entered final judgment in favor of Andes in the amount of $558,577,380.56, which included pre-judgment interest totaling $166,107,500.79 as well as arbitration costs. On appeal, OEPC contests both the District Court's confirmation of the arbitration award and the District Court's calculation of pre-judgment interest.

II. Legal Standard

"We review a district court's decision to confirm an arbitration award de novo to the extent it turns on legal questions, and we review any findings of fact for clear error." *A&A Maint. Enter., Inc. v. Ramnarain*, 982 F.3d 864, 868 (2d Cir. 2020) (quotation marks omitted). "This Court has repeatedly recognized the strong deference appropriately due arbitral awards and the arbitral process, and has limited its review of arbitration awards in obeisance to that process." *Porzig v. Dresdner, Kleinwort, Benson, N. Am. LLC*, 497 F.3d 133, 138 (2d Cir. 2007).

III. Discussion

OEPC provides no evidence that Smit was partial. "Unlike a judge, who can be disqualified in any proceeding in which his impartiality might reasonably be questioned, an arbitrator is disqualified only when a reasonable person, considering all the circumstances, would *have* to conclude that an arbitrator was partial to one side." *Scandinavian*

Reinsurance Co. Ltd. v. St. Paul Fire & Marine Ins. Co., 668 F.3d 60, 72 (2d Cir. 2012) (quotation marks omitted). Although "[p]roof of actual bias is not required, . . . a showing of evident partiality may not be based simply on speculation." *Id.* (quotation marks omitted). OEPC speculates that Andes had the opportunity to obtain "real-time, behind-the-scenes access" to Smit. Appellant's Br. 21. But its speculation does not establish evident partiality. As we have observed, "we do not think that the fact that two arbitrators served together in one arbitration at the same time that they served together in another is, without more, evidence that they were predisposed to favor one party over another in either arbitration." *Scandinavian Reinsurance*, 668 F.3d at 74. Similarly here, aside from Smit's and Shore's concurrent service, OEPC does not allege a "material relationship" such as a "family connection or ongoing business arrangement with a party or its law firm—circumstances in which a reasonable person could reasonably infer a connection between the undisclosed outside relationship and the possibility of bias for or against a particular arbitrating party." *Id.*

Nor does OEPC cite any precedent supporting its theory that nondisclosure can result in an arbitrator exceeding his powers because he lacks the authority to not disclose the relationship. Even assuming Smit had a disclosure obligation under the parties' agreements, his nondisclosure did *not* pass the "high hurdle" for vacating an arbitration decision under 9 U.S.C. § 10(a)(4) because Smit did not "effectively dispense[] his own brand of industrial justice" and "make public policy." *Stolt-Nielsen S.A. v. AnimalFeeds Intl. Corp.*, 559 U.S. 662, 671-72 (2010).

OEPC next contends that the Convention precludes confirmation of the award because "[t]he composition of the arbitral authority . . . was not in accordance with the agreement of the parties." Convention, art. V. §1(d). The burden on OEPC to avoid confirmation "is a heavy one, as the showing required to avoid summary confirmance is high." *Zeiler v. Deitsch*, 500 F.3d 157, 164 (2d Cir. 2007). There is no evidence in the record before us, however, that Smit's nondisclosure interfered with the "composition" of the arbitral authority. And the parties "explicitly settled on a form" for the arbitration, and "their commitment [was] respected." *Encyc. Universalis S.A. v. Encyc. Britannica, Inc.*, 403 F.3d 85, 91 (2d Cir. 2005). Nondisclosure of an unrelated arbitration in this case does not appear to have undermined "the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation." *Id.* at 90 (quotation marks omitted).

Finally, OEPC challenges two aspects of the District Court's pre-judgment interest calculation. First, it claims that the District Court used the wrong reference point for calculating the pre-judgment interest rate. OEPC argues that the District Court erred in treating March 4, 2016, as the "due date of payment" under the parties' agreements because the payment of the award was not due until April 25, 2021, making April 23, 2021, the "first Business Day prior to the due date of payment," *see* J. App'x 250, and the reference point for determining the interest rate. Second, OEPC argues that the District Court made a mathematical error by calculating compound interest based on a 360-day year and applying that rate to 365-

day calendar years, otherwise known as the "365/360" method. *Am. Timber & Trading Co. v. First Nat'l Bank of Or.*, 511 F.2d 980, 982 n.1 (9th Cir. 1973) (explaining that, under the 365/360 method, "interest charged for a calendar year is greater than interest charged either the 365/365 or 360/360 methods"). At least as to the second alleged error, Andes responds with a conclusory assertion in a footnote, which refers only to the District Court's "broad discretion." Appellee's Br. 46 n.37; *see Tolbert v. Queens College*, 242 F.3d 58, 75 (2d Cir. 2001) ("A contention is not sufficiently presented for appeal if it is conclusorily asserted only in a footnote."). To be sure, "[t]he award of interest is generally within the discretion of the district court and will not be overturned on appeal absent an abuse of discretion." *ExxonMobil Oil Corp. v. TIG Ins. Co.*, 44 F.4th 163, 178 (2d Cir. 2022). But while the District Court may exercise its broad discretion to award pre-judgment interest, here the District Court appears to have adopted Andes's proposed final judgment without further explanation. *See* Special App'x 11-12. The District Court provided no justification for its determination of the due date of payment or its application of the 365/360 method. Because we are not confident, on this record, that the District Court accurately calculated the compound interest, we vacate the District Court's award of pre-judgment interest and remand for further consideration of OEPC's two objections. On remand, the District Court should adequately explain its calculation of pre-judgment interest.

We have considered OEPC's remaining arguments and conclude that they are without merit.

For the foregoing reasons, the judgment of the District Court is AFFIRMED in part and VACATED in part.

FOR THE COURT:

Catherine O'Hagan Wolfe,
Clerk of Court

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 21-3039

ANDES PETROLEUM ECUADOR LTD.,
Petitioner-Appellee,
v.
OCCIDENTAL EXPLORATION & PRODUCTION COMPANY,
Respondent-Appellant.

Filed: August 11, 2023

Appellant, Occidental Exploration and Production Company, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

No. 21-3930

ANDES PETROLEUM ECUADOR LTD.,
Petitioner,
v.
OCCIDENTAL EXPLORATION & PRODUCTION COMPANY,
Respondent.

Filed: November 15, 2021

ORDER

ALVIN K. HELLERSTEIN, U.S.D.J.:

This case arises out of a dispute and subsequent arbitration regarding an agreement to carry out hydrocarbon development in the Ecuadorian Amazon Region ("Block 15"). Petitioner Andes Petroleum Ecuador Limited ("Petitioner") moves to confirm (ECF No. 1), and Respondent Occidental Exploration and Production Company ("Respondent") moves to vacate (ECF No. 28), an arbitration award of approximately $500 million. For the reasons described below, Petitioner's motion to confirm is granted, and Respondent's motion to vacate is denied.

BACKGROUND

The relevant facts are as follows. In 1999, Respondent entered into a Participation Contract with PetroEcuador, pursuant to which Respondent would carry out hydrocarbon development in Block 15. Final Arbitration Award ("Final Award") ¶ 12, ECF No. 3-1. In 2000, Respondent and Petitioner signed two agreements—the Farmout Agreement and the Joint Operating Agreement—in which Respondent agreed to assign Petitioner a 40 percent interest in Respondent's exploration and exploitation rights in Block 15, subject to the approval of the Ecuadorian government. *Id.* ¶¶ 13-14; ECF No. 3-4.

In 2004, Ecuador began threatening to terminate Respondent's contract. Final Award ¶ 18. On February 22, 2006, Petitioner and Respondent entered into a Letter Agreement, which amended the Farmout Agreement. *Id.* ¶ 20; ECF No. 3-3. As relevant here, paragraph 2(g) of the Letter Agreement provided:

> [i]f Occidental receives any monetary award from the Government of Ecuador as a result of the Government's actions to enforce caducity and terminate Occidental's contract with respect to Block 15, Occidental agrees that [Andes] is entitled to a 40% share in the net amount received, after all costs and expenses of the Caducity Proceedings [as defined in the Letter Agreement] have been reimbursed or paid (in calculating such amount there shall be no double counting).

Id. ¶ 2(g).

In May 2006, Ecuador terminated Respondent's Block 15 rights, and Respondent commenced an

arbitration proceeding against Ecuador before the International Centre for the Settlement of Investment Disputes ("ICSID"), seeking compensation for its losses. Final Award ¶¶ 21-22. On January 7, 2016, Respondent reached a settlement agreement with Ecuador for approximately $980 million and a release of certain disputed tax and labor sums. *Id.* ¶ 33. On February 23, 2016, Petitioner invoked paragraph 2(g) of the Letter Agreement and demanded that Respondent pay 40 percent of the amount received in the settlement. *Id.* ¶ 34. Respondent rejected this demand on March 4, and Petitioner commenced an arbitration proceeding on July 10, 2016. *Id.* ¶¶ 34-35.

Pursuant to the Parties' Agreement and consistent with the AAA Commercial Arbitration Rules, each Party appointed one arbitrator to the three-person tribunal (the "Tribunal), and the two party-appointed arbitrators appointed the third presiding arbitrator. *Id.* ¶¶ 8, 10. In August 2017, Petitioner nominated Richard Ziegler ("Ziegler"), and Respondent nominated Robert Smit ("Smit"), who together, in turn, nominated James Hosking ("Hosking") to chair the Tribunal. *Id.* ¶ 40. During the vetting process, Smit had disclosed that he knew Petitioner's Lead Counsel, Laurence Shore ("Shore"), in a professional context from arbitration conferences. *See* ECF No. 31-1. On January 10, 2018, Smit was appointed to serve on the International Chamber of Commerce ("ICC") panel in a separate, unrelated arbitration; Shore was appointed to serve as president of the same panel in April 2018. Declaration of Laurence Shore ¶ 28a, ECF No. 38-1. While neither Smit nor Shore disclosed their appointments directly

to Respondent, the appointments were publicly listed on multiple websites. *Id.* ¶¶ 31, 33.

The Tribunal conducted a merits hearing on September 1-3, 2020, and on March 26, 2021, unanimously issued an award (the "Award") in favor of Petitioner in the amount of $391,879,747 plus interest and costs, finding that Respondent's "refusal to pay [Petitioner] 40% of the Settlement Amount recovered from the Government of Ecuador as a consequence of the ICSID Arbitration was a breach of paragraph 2(g) of the Letter Agreement." Final Award ¶¶ 118, 347, 347a. Petitioner moves to confirm, and Respondent to vacate, the Award. Respondent's proffered grounds for vacatur, under subsections 10(a)(1)-(4) of the FAA, relate to the alleged impartiality of Respondent's appointed arbitrary, and the alleged imperfect execution of the duties of the arbitration panel.

DISCUSSION

I. Legal Standard

"Congress enacted the Federal Arbitration Act ("FAA") [, 9 U.S.C. § 1 *et seq.*,] to replace judicial indisposition to arbitration with a 'national policy favoring [it] and plac[ing] arbitration agreements on equal footing with all other contracts.'" *Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 581 (2008) (quoting *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006)). The Act makes contracts to arbitrate "valid, irrevocable, and enforceable," so long as their subject involves "commerce." FAA, § 2. The Act supplies a streamlined mechanism for enforcing arbitration awards—a judicial decree confirming an

award, an order vacating it, or an order modifying or correcting it. *Hall*, 552 U.S. at 582; FAA §§ 9-11.

A court's review of an arbitration award is "severely limited in view of the strong deference courts afford to the arbitral process." *Certain Underwriting Members of Lloyds of London v. Fla., Dep't of Fin. Servs.*, 892 F.3d 501, 505 (2d Cir. 2018) (citation omitted). This limitation prevents frustration of the "twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation." *Landau v. Eisenberg*, 922 F.3d 495, 498 (2d Cir. 2019) (citation omitted). Therefore, under the Federal Arbitration Act, the "party moving to vacate an arbitration award has the burden of proof, and the showing required to avoid confirmation is very high." *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 110 (2d Cir. 2006).

Section 9 of the FAA provides that "a court 'must' confirm an arbitration award 'unless' it is vacated, modified, or corrected 'as prescribed' in §§ 10 and 11." *Hall*, 552 U.S. at 582 (quoting 9 U.S.C. § 9). Under Section 10(a), a court may vacate an arbitration award in four situations:

> (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.

II. Analysis

A. Corruption, Fraud, or Undue Means

Respondent argues that Smit's incomplete disclosures, and Shore and Petitioner's silence, on their previous professional relationship constituted fraud because the disclosures did not give Respondent reason to do any further research into the professional contacts of the chosen arbitrators. *See* Memorandum of Law in Support of Motion to Vacate Arbitration Award ("Mem. Vacate"), at 19-21, ECF No. 29.

Vacatur on grounds of fraud requires a party to "adequately plead that (1) respondent engaged in fraudulent activity; (2) even with the exercise of due diligence, [the party] could not have discovered the fraud prior to the award issuing; and (3) the fraud materially related to an issue in the arbitration." *Odeon Cap. Grp. LLC v. Ackerman*, 864 F.3d 191, 196 (2d Cir. 2017). To adequately plead materiality, a party "must demonstrate a nexus between the alleged fraud and the decision made by the arbitrators, although [the party] need not demonstrate that the arbitrators would have reached a different result." *Id.*

Even assuming that Petitioner and the related arbitrators engaged in fraudulent activity through their incomplete or nondisclosures, Respondent

cannot adequately plead fraud because "with the exercise of due diligence," Respondent could have discovered their relationships because in June 2018, at least one publicly-available website had published Smit and Shore's appointments to the ICC panel. Accordingly, I cannot vacate the Award for fraud.

B. Arbitrator Partiality

Respondent argues that Smit was "evidently partial" to Petitioner, and that Smit's relationship with Shore was material because they were working together closely at the time, and therefore, had the opportunity for *ex parte* communications, collegial interactions, and collaborative decisionmaking. *See* Mem. Vacate, at 21-25.

"The FAA does not proscribe all personal or business relationships between arbitrators and the parties." *Certain Underwriting*, 892 F.3d at 507. An arbitrator will be disqualified for evident partiality "only when a reasonable person, considering all of the circumstances, would *have* to conclude that an arbitrator was partial to one side." *Applied Indus. Materials Corp. v. Ovalar Makine Ticaret Ve Sanayi, A.S.*, 492 F.3d 132, 137 (2d Cir. 2007) (citation omitted). "It is the materiality of the undisclosed conflict that drives a finding of evident partiality, not the failure to disclose or investigate *per se*." *Certain Underwriting*, 892 F.3d at 506. Courts find material relationships where arbitrators have undisclosed pecuniary interests or close familial relationships, but "the fact that two arbitrators served together in one arbitration at the same time that they served together in another is [not], without more, evidence that they were predisposed to favor one party over another in

either arbitration." *Scandinavian Reinsurance Co. v. Saint Paul Fire & Marine Ins. Co.*, 668 F.3d 60, 74 (2d Cir. 2012).

Because Respondent bases its argument of partiality on only concurrent service on two panels and merely speculates about the opportunity to engage in misconduct, it fails to provide the something "more" to establish material partiality. I am therefore not compelled to conclude that Smit was partial to Petitioner, or that the Award should be vacated on grounds of arbitrator partiality.

C. Arbitrator Misconduct

Respondent argues that Smit's failure to disclose his professional relationship with Shore was fundamentally unfair to Respondent because it deprived Respondent of its contractual rights to disclosure and to demand that Smit be removed and replaced by a "wholly independent" arbitrator. Mem. Vacate, at 17-18.

"Courts have interpreted section 10(a)(3) to mean that except where fundamental fairness is violated, arbitration determinations will not be opened up to evidentiary review." *Tempo Shain Corp. v. Bertek*, 120 F.3d 16, 20 (2d Cir. 1997). Misconduct must amount to a denial of fundamental fairness of the arbitration proceeding. *Roche v. Local 32B-32J Serv. Empls. Int'l Union*, 755 F. Supp. 622, 624 (S.D.N.Y. 1991). "Arbitral misconduct typically arises where there is proof of either bad faith or gross error on the part of the arbitrator." *Baumann Bus Co. v. Transp. Workers Union Of: Am., Local 252, AFL-CIO*, No. 19-CV-02980, U.S. Dist. LEXIS 53023, at *13-14 (Mar. 22, 2021) (quoting *In re Cragwood Managers, L.L.C. (Reliance*

Ins. Co.), 132 F. Supp. 2d 285, 287 (S.D.N.Y. 2001)). "To show arbitral misconduct, 'the challenging party must show that his right to be heard has been grossly and totally blocked, and that this exclusion of evidence prejudiced him.'" *Id.* (quoting *Oracle Corp. v. Wilson*, 276 F. Supp. 3d 22, 30-31 (S.D.N.Y. 2017)).

Here, Respondent points to nothing in the arbitral *proceedings* to suggest that it was denied fundamental fairness. Respondent does not claim that its right to be heard was "grossly and totally blocked," nor that it was prevented from offering evidence. *Oracle Corp.*, 276 F. Supp. 3d at 30-31. In fact, Respondent does not point to anywhere it objected to the way the arbitrators conducted the hearing. *Baumann*, No. 19-CV-02980, at *16. Smit's failure to disclose his limited personal relationship simply does not rise to the level of misconduct necessary to justify and compel vacatur.

D. Arbitrator Exceeded Authority

OEPC argues that Smit exceeded his powers under the parties' agreement when he failed to disclose his relationship with Shore because "[t]he arbitration agreement, by its plain terms, deprived [Smit] of any authority to 'detract from' the disclosure obligations it mandated." Mem. Vacate, at 16. In other words, Smit lacked the authority not to disclose the relationship, and therefore, vacatur is warranted because Smit "destroyed [Respondent's] right to a *wholly* independent panel and prejudiced [Respondent's] right to remove and replace Smit as an arbitrator." *Id.* at 17 (emphasis in original).

The Second Circuit has "consistently accorded the narrowest of readings to [§ 10(a)(4)], in order to facilitate the purpose underlying arbitration: to

provide parties with efficient dispute resolution, thereby obviating the need for protracted litigation." *ReliaStar Life Ins. Co. of N.Y. v. EMC Nat. Life Co.*, 564 F.3d 81, 85 (2d Cir. 2009) (citation omitted). It is not enough "to show that the panel committed an error—or even a serious error. It is only when an arbitrator strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice that his decision may be unenforceable." *Stolt-Nielson S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671 (2010) (citation omitted).

Under § 10(a)(4), the proper inquiry is therefore "whether the arbitrator's award draws its essence from the agreement to arbitrate . . . . If the answer to this question is yes, . . . the scope of the court's review of the award itself is limited." *ReliaStar*, 564 F.3d at 85-86 (citation omitted). The court does "not consider whether the arbitrators correctly decided the issue" and should "uphold a challenged award as long as the arbitrator offers a barely colorable justification for the outcome reached." *Id.* at 86 (citation omitted).

Here, Respondent does not allege that either Smit or the Tribunal "stray[ed] from interpretation and application of the agreement." Because the Tribunal decided an issue within the scope of the agreement and offered a colorable justification for the outcome it reached, Respondent's motion to vacate the Award under Section 10(a)(4) is also denied.

CONCLUSION

For the reasons discussed, the petition to confirm the Award is granted, and Respondent's motion to vacate the Award is denied. The Clerk shall terminate the motions (ECF Nos. 1, 28) and enter judgment for the Petitioner plus costs and interest.

SO ORDERED.

Dated: Nov. 15, 2021
New York, New York

/s/Alvin K. Hellerstein
ALVIN K. HELLERSTEIN
United States District Judge

Appendix D

RELEVANT STATUTORY PROVISION
9 U.S.C. §10

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(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.