UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-cv-21663-WILLIAMS/TORRES

LANCE SOSKIN,

Petitioner,

v.

ROYAL CARIBBEAN CRUISES, LTD.,

Respondent.
_____/

ORDER ON RESPONDENT'S MOTION FOR PRE-JUDGMENT BOND

This matter is before the Court on Royal Caribbean Cruises, LTD's ("Respondent") Motion for a Pre-Judgment Bond ("Motion") against Lance Soskin ("Petitioner"). [D.E. 16]. On June 8, 2017, Petitioner responded to Respondent's Motion [D.E. 21] and Respondent timely replied on June 14, 2017. [D.E. 25]. Therefore, Respondent's Motion is now ripe for disposition. After careful consideration of the Motion, response, reply, relevant authority, and for the reasons discussed below, Respondent's Motion is **DENIED**.

I. BACKGROUND

Petitioner, who is proceeding *pro se,* initiated arbitral proceedings against Respondent after his employer terminated him during a cruise the employer sponsored. [D.E. 1-3 at 3]. After hearing testimony from six witnesses, the arbitrator entered an award in favor of Respondent against Petitioner on a claim under Florida law for tortious interference with the employment relationship.

Pursuant to that decision, the arbitrator later issued an order awarding Respondent $23,466.44 in fees and costs and subsequently entered final judgment. On April 6, 2017, Petitioner filed a motion to vacate the arbitration award in the Eleventh Judicial Circuit in and for Miami-Dade County. On May 4, 2017, Respondent filed an enforcement action and a motion to enforce the same arbitration award in this Court. The next day, Respondent removed the Petitioner's action to this Court and the Court accepted transfer on May 16, 2017.

II. ANALYSIS

The gist of Respondent's Motion is to require the Petitioner to post a pre-judgment bond as security in amount of $23,466.44 – the total amount awarded by an arbitrator. Respondent requests security as a direct result of the Petitioner's motion to vacate the arbitration award that was filed on April 6, 2017. As support, Respondent relies on Article VI of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"):

> If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

9 U.S.C. § 201.

Respondent argues that all of the requirements of Article VI are satisfied here and that the Court has the discretion to order security if it considers it proper given the circumstances presented. Respondent also contends that Article VI

provides authority for courts to require positing adequate security to prevent prejudice resulting from the prevailing party's inability to immediately enforce the award and to ensure that satisfaction of the judgment be had. Because Petitioner has purportedly expressed a desire to delay and outright avoid paying the arbitration award, Respondent suggests that the circumstances presented are appropriate to order Petitioner to post security under Article VI to prevent prejudice and to ensure that payment of the award will be enforced.

In response, Petitioner acknowledges that Article VI of the New York Convention applies in this case, but contends that there are two important factors for the Court to consider. First, Petitioner notes that the Court has the discretion as to whether to order him to post suitable security. Second, Petitioner argues that Article VI implies that the discretion to order suitable security to be posted is when an authority adjourns on the decision on the enforcement of the award. If there is no adjournment of the enforcement action, Petitioner reasons that there is no need to post a security.

Furthermore, Petitioner contends that courts have only ordered a party seeking vacatur of an arbitration award to post security where enforcement proceedings take place in different countries, or where either party has shown by its actions that it intends to delay or frustrate the enforcement of an award without a valid reason. *See, e.g.*, *Chevron Corp. v. Republic of Ecuador*, 949 F. Supp. 2d 57, 71 (D.D.C. 2013) ("Under the Convention, district courts do have discretion to stay proceedings where 'a parallel proceeding is ongoing in the originating country and

there is a possibility that the award will be set aside.'") (quoting *Europcar Italia, S.p.A. v. Maiellano Tours, Inc.,* 156 F.3d 310, 317 (2d Cir. 1998)); *Int'l Ins. Co. v. Caja Nacional De Ahorro y Seguro*, 293 F.3d 392, 401 (7th Cir. 2002) ("Caja repeatedly failed to appear for any part of the arbitration proceeding. We do not deem it to be an abuse of discretion for a court to require such a party to post security in the full amount of the possible judgment against it given this poor track record."). As such, Petitioner argues that posting security is proper when a party's actions demonstrate that they are unlikely to pay an award if it is not vacated by the court. Because Respondent has purportedly failed to demonstrate any intent on behalf of Petitioner to not satisfy the arbitration award, Petitioner argues that Respondent's Motion must be denied.

As another basis to deny Respondent's Motion, Petitioner argues that he has evidence that the arbitrator was biased in granting the award, including a transcript of a phone call that the arbitrator had during a break for lunch. The arbitrator purportedly told a third party that "[h]opefully well get through today, and then I'll write a decision sticking it to [Petitioner], between me and you." [D.E. 21]. Because of the evidence demonstrating that the arbitrator was allegedly biased, Petitioner suggests that there are many persuasive reasons for granting his motion to vacate the arbitration award and that this presents a valid basis for the Court to exercise its discretion to not require a security bond.

The purpose of the New York Convention is to "encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to

unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries." *Scherk v. Alberto–Culver Co.,* 417 U.S. 506, 520, n.15 (1974). By its plain language, the New York Convention allows a court to use its discretion and decide whether or not to impose a security requirement. In particular, "Article VI allows courts in which enforcement is sought to stay the enforcement proceedings 'if it considers it proper' and, 'on the application of the party claiming enforcement of the award, order the other party to give suitable security." *Aperture Software GmbH v. Avocent Huntsville Corp.*, 2015 WL 12838967, at *1 (N.D. Ala. Jan. 5, 2015).

Here, Respondent argues that requiring the Petitioner to post bond is warranted because there is a substantial risk that the Petitioner will not comply with the arbitration award, even after this Court denies the allegedly frivolous motion to vacate. Respondent suggests that Petitioner has not given any assurances to opposing counsel or the Court that he has the financial wherewithal to satisfy the arbitration judgment and that requiring security will protect the Respondent's financial interests. Because the Petitioner purportedly represents a serious risk of jeopardizing the arbitration award, Respondent contends that its Motion must be granted to alleviate any potential prejudice.

Yet, Respondent's Motion is deficient in multiple ways. First, Respondent presented no authority in its Motion as support for why a security bond should be issued in connection with the facts presented. The only case Respondent replied upon was the Seventh Circuit's decision in *Int'l Ins. Co. v. Caja Nacional De Ahorro*

y Seguro. *See* 293 F.3d at 401. But, that case involved circumstances where a party repeatedly failed to appear for any part of the arbitration proceedings and the Seventh Circuit determined that the district court's order of pre-judgment security was appropriate. Nowhere in Respondent's Motion does it state or imply that the Petitioner failed to attend arbitration hearings. Therefore, Respondent's reliance on the Seventh Circuit's decision is misplaced because it has no relevance to the facts presented.

More importantly, and second, Respondent's Motion only makes conclusory allegations and vague references that the Petitioner represents a substantial risk of prejudicing the full payment of the arbitration award. The Respondent is never specific with respect to its concerns, except for the statement that there have been no financial assurances provided to ensure the full payment of the arbitration award. Respondent noticeably does not explain how it might have sought financial assurances or how Petitioner specifically represents a financial risk. While Respondent claims that Petitioner has expressed a desire to delay these proceedings and avoid payment of the arbitration award, Respondent does not provide any substance, evidence, or discussion in support of these allegations.

As Respondent's Motion stands now, it lacks both the requisite factual and legal support to find that there is any prejudice that persuades this Court to exercise its discretion and require a security bond. Because Respondent's Motion falls flat in several ways – including the omission of any persuasive authority on the

question presented – the Court has no basis to find that a security bond is appropriate. Accordingly, Respondent's Motion is **DENIED**.

III. CONCLUSION

For the reasons stated above, it is hereby **ORDERED AND ADJUDGED** that Respondent's Motion for a Pre-Judgment Bond is **DENIED**. [D.E. 16].

DONE AND ORDERED in Chambers at Miami, Florida, this 7th day of July, 2017.[1]

/s/ *Edwin G. Torres*
EDWIN G. TORRES
United States Magistrate Judge

[1] In the Petitioner's response brief, Petitioner requests that the Court award attorney's fees and costs based on the time spent in responding to Respondent's Motion. However, Petitioner presents no factual or legal basis to support an award for costs or fees. Therefore, Petitioner's request is **DENIED**.