

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RHONE-POULENC AGRO, S.A.,)
now AVENTIS CROPSCIENCE, S.A.,)
)
Petitioner,)
)
v.) Civil Action No. 01-649-SLR
)
CALGENE LLC,)
)
Respondent.)

MEMORANDUM ORDER

At Wilmington this 29th day of May, 2002, having reviewed the parties' motions regarding confirmation of the arbitration award and papers submitted in connection therewith, and having heard oral argument on the same;

IT IS ORDERED that the parties' motions (D.I. 1, 8) are denied and the case is remanded to the arbitration panel for clarification for the reasons that follow:

1. The court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 and section 10 of the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq.

2. As a general rule, once an arbitration panel renders a decision regarding the issues submitted, it becomes functus officio and lacks any power to reexamine that decision. See Colonial Penn Ins. Co. v. Omaha Indem. Co., 943 F.2d 327, 331 (3d Cir. 1991). The Third Circuit has recognized three exceptions to this general bar against remand:

(1) an arbitrator can correct a mistake which is apparent on the face of the award; (2) where the award does not adjudicate an issue which has been submitted, then as to such issue the arbitrator has not exhausted his function and it remains open to him for subsequent determination; and (3) where the award, although seemingly complete, leaves doubt whether the submission has been fully executed, an ambiguity arises which the arbitrator is entitled to clarify.

Id. at 332 (internal quotations omitted). Regarding the third exception, the Court noted:

It is generally recognized that there are circumstances, albeit limited, under which a district court can remand a case to the arbitrators for clarification. Although there is no explicit provision in the Act for such a remand, courts have uniformly stated that a remand to the arbitration panel is appropriate in cases where the award is ambiguous. Because of the limited purpose of such a remand, which serves the practical need for the district court to ascertain the intention of the arbitrators so that the award can be enforced, there is not even a theoretical inconsistency with the functus officio doctrine.

Id. at 334 (internal citations omitted).

[A] remand for clarification under such conditions is consistent with the policy of judicial restraint that is the thrust of federal arbitral jurisprudence because it gives the arbitrator the opportunity to clarify an award with respect to which an ambiguity has arisen rather than forcing the court to interpolate its own estimate of the arbitrator's intent.

Office & Prof. Employees Int'l Union, Local No. 471 v.

Brownsville Gen. Hosp., 186 F.3d 326, 332 (3d Cir. 1999). "Such

a remand avoids the court's misinterpretation of the award and is therefore more likely to give the parties the award for which they bargained." Colonial Penn, 943 F.2d at 334.

3. In the case at bar, the arbitration panel held that Calgene, LLC ("Calgene") had no standing to bring the claims set forth in its Demand for Arbitration. The panel then denied the merits of Calgene's claims and Aventis Cropsience, S.A.'s counterclaim. (D.I. 9, Ex. 1) As the court cannot determine the intention of the arbitrators from the face of the award, the panel shall clarify its ruling by stating whether Calgene had no standing (and, therefore, the panel cannot address the parties' claims), or whether there is no jurisdictional obstacle to determining the parties' claims on the merits.

Sue L. Robinson
United States District Judge