

AMERICAN ARBITRATION ASSOCIATION

Space Race, LLC,)	
)	Case No. 01-17-0007-7616
Claimant,)	
vs)	
)	
U.S. Space & Rocket Center Foundation)	
Corp. and Alabama Space Science)	
Exhibit Commission, Corp. d/b/a U.S.)	
Space & Rocket Center,)	
)	
Respondents.)	

FINAL AWARD

We, the undersigned Arbitrators, having been designated in accordance with the arbitration agreement contained in a Memorandum of Agreement, entered into June 29, 2016 (the "MoA") between Claimant Space Race, LLC ("Space Race") and Respondent Alabama Space Science Exhibit Commission, Corp. d/b/a U.S. Space & Rocket Center ("USSRC"); and having been duly sworn; and having duly heard the proofs and allegations of Space Race, represented by Kennedy & Berg LLP (Gabriel Berg), and USSRC, represented by Bradley Arant Boult Cummings LLP (Daniel Kaufmann, David Holt); and a Hearing having been held; do hereby decide as follows.

Procedural Background

Space Race filed a Demand for Arbitration, dated December 28, 2017, and Statement of Claim, dated January 2, 2018, in which it asserted claims for (I) Breach of Contract and Breach of the Duty of Good Faith and Fair Dealing; (II) in the alternative, Declaratory Judgment; and (III) in the alternative, Reasonable Value of Services in *Quantum Meruit*. Space Race's claims arise out of USSRC's alleged failure to pay the outstanding principal amount of \$1,313,902 pursuant to the MoA.

USSRC filed an Answer to Statement of Claim, dated January 12, 2018, in which it denied the material allegations set forth in the Statement of Claim and asserted various Affirmative Defenses.

Early in the arbitration proceeding, USSRC sought dismissal of the arbitration based upon improper locale of the hearing and the absence of an indispensable party, the U.S. National Aeronautics and Space Administration ("NASA"). Such application was denied by the Arbitrators.

Pursuant to an agreement between counsel for the parties, named Respondent U.S. Space & Rocket Center Foundation, Corp. was dismissed from and is no longer a party to this arbitration.

An evidentiary hearing was held before the Arbitrators on July 23, 24, 25 and 26, 2018. Post-hearing briefs, each dated September 7, 2018, were submitted by counsel for the parties. Following a request by counsel for further briefing, which the Arbitrators granted, USSRC submitted a Response to Claimant's Post-Trial Brief, dated September 28, 2018, and Space Race submitted Claimant's Post-Trial Reply Brief, dated October 9, 2018. The arbitration was formally closed on October 15, 2018.

At the request of Space Race, the Arbitrators issued a non-party subpoena upon NASA, headquartered in Washington, DC, specifically seeking the appearance and testimony of Kristen J. Erickson at the Hearing. USSRC did not seek to subpoena Erickson. NASA elected not to comply with the subpoena and no one from NASA appeared to testify at the Hearing.

During the Hearing, the Arbitrators expressed their desire to receive testimony from Erickson and offered to arrange for her to testify via video conference or to travel to Washington DC to hear her testimony in person. Thereafter, counsel attempted to secure Erickson's

testimony, although an order from a Washington DC court compelling her to comply with the subpoena was not sought by either party. In a letter, dated August 15, 2018, from in-house counsel, NASA refused to produce Erickson as a witness at the Hearing, contending that her testimony would be “cumulative of information already available to the parties.” Ex. 48.

Summary of Factual Findings

Space Race is a for-profit company specializing in the production of children’s programming and educational entertainment. Statement of Claim, par. 17.

USSRC is a non-profit commission and agency of the State of Alabama that runs the official visitor center for the NASA Marshall Space Flight Center (an affiliate of the Smithsonian), U.S. Space Camp, U.S. Space Academy and Aviation Challenge and Robotics Camp. Answer to Statement of Claim, p. 1.

USSRC entered into a NASA Grant and Cooperative Agreement, effective February 2, 2016, pursuant to which NASA was to provide funding to USSRC which, in turn, was to disburse funding to Space Race and other entities to perform contracted services. (the “CAN”). USSRC acted as an intermediary due to NASA’s requirement that funding be granted directly only to non-profit entities. USSRC essentially functioned as a “pass-through” entity under the CAN. Tr. 243, 423.

Thereafter, USSRC and Space Race entered into the MoA, which set forth their duties and responsibilities with reference to performance under the CAN. Space Race agreed to produce and USSRC agreed to pay for a series of animated television programs – called Space Racers – that was intended to educate children regarding space science and exploration. USSRC’s obligations to pay Space Race were conditioned upon USSRC’s receipt of related funding from NASA. The CAN and the MoA provided for three years of funding. Ex. 7, p. 3

Space Racers episodes were broadcast on American Public Television and well received by USSRC, NASA and the viewing public. Space Racers episodes were accompanied not by commercial advertising but by “interstitials” in which astronauts, academics or researchers presented substantive content regarding space science.

Space Race was approached by NBC’s The Children’s Network LLC d/b/a “Sprout” (“NBC Sprout”) which offered to broadcast Space Racers on its for-profit television stations. As such, the episodes would be accompanied by commercial advertising rather than interstitials. Space Race entered into a distribution agreement effective April 15, 2016 with NBC Sprout for the broadcast of Space Racers. The MoA (Exhibit A, also referred to as the “Rescope”) provided: “In summary, to accommodate a distribution agreement with Sprout that vastly expands the reach and visibility of the program, the timeline for episodic development shrinks from spanning three years to a compressed 12-18 months, with funding in that time frame dedicated principally to producing episodes for scheduled delivery beginning in late 2016.” Ex. 7 at 7295.

The Rescope was submitted to and accepted by NASA, and some amount of accelerated funding was provided by NASA (through USSRC) to Space Race. Tr. 471-72, 480; Respondent’s Post-Hearing Memorandum, p. 21. The agreement and expectation of all of the parties became that Space Race would produce all of the Space Racers episodes and incur the expenses to do so in the first 12-18 months of the CAN, but would be paid in full over the 3 years of the CAN. Ex. 7 at 7295.

Space Race was able to complete production of all 20 episodes of Space Racers covered by the MoA by the middle of 2017. USSRC facilitated the accelerated production of the Space Racers episodes.

Space Race invoiced USSRC on a periodic basis for services rendered. Payments were made by USSRC in advance of the payment schedule set forth in the CAN. Tr. 471-72. For example, after it had received payments totaling \$2.5 million, Space Race requested that a further payment of \$500,000 be accelerated. Such payment was expedited and paid on or about August 1, 2017. Tr. 158. In total, during 2016 and 2017, USSRC paid Space Race \$3 million of the initial contract amount of \$4.5 million.

USSRC never objected to any Space Race invoice. Tr. 130, 136. Nor was Space Race ever requested by USSRC to stop work. Tr. 146, 891-92.

The distribution of Space Racers through NBC Sprout greatly increased the reach of the programming. REx. 102. Space Camp's name and logo were displayed during the opening and closing credits of Space Racers. Tr. 126, 133, 319. This was a valuable branding opportunity for USSRC.

Both Dr. Kay Taylor, USSRC's expert witness, and Scott Harbour, the principal investigator at USSRC for the CAN, testified that, as early as 2016, there were discussions among USSRC and NASA that funding for year three of the CAN might not be provided. Tr. 928-29. However, such discussions were not shared with anyone at Space Race at that time. There was no reason presented at the Hearing for the delay in conveying such critical information, especially since during that time Space Race was working to complete the Space Racers episodes on an accelerated basis as provided for in the Rescope.

According to Dr. Deborah Barnhart, the Chief Executive Officer of USSRC, Erickson advised her in June of 2017 that the final \$1.5 million installment would not be paid by NASA. Space Race was first advised of this by Barnhart at or about such time. Tr. 266-67, 284.

On November 29, 2017, a conference call was held among Erickson on behalf of NASA, Scott Harbour on behalf of USSRC, and Chuck Matays, Matthias Schmidt and Ruth Netting of Space Race. Erickson advised those on the call that NASA would not further fund Space Race because of USSRC's repeated failure to provide reports that it was required to submit under the CAN. Ex 14, p. 10-11. NASA's position was consistent with Harbour's understanding that funding would be jeopardized by USSRC's failure to submit reports required under the CAN. Tr. 114-15.

Harbour took contemporaneous notes of the November 29 conference call, including: "Kristen told SR [Space Race] that no year 18 funding would occur and it was due to us [USSRC] not meeting contract requirements." Ex. 42 at 5579. At the Hearing, Erickson's assertion during the November 29 conference call that USSRC had breached the CAN also was confirmed in the testimony of Netting (USSRC "had not provided evaluations and that those needed to be submitted." Tr. 54), Chuck Matays and Matthias Schmidt (Erickson said that USSRC had not submitted the required reports, jeopardizing Space Race's future funding.) REx. 144.

Erickson further advised during the November 29, 2017 conference call that, if USSRC furnished the delinquent reports and a letter from USSRC requesting NASA funding for year three, then the remaining year three funding from NASA would remain in the NASA budget for 2018. Tr. 54-55, 170-71, 716. Harbour agreed that he was "unaware of any reason that USSRC can't write the memo that Kristin [Erickson] suggested in order to continue the funding." Tr. 185.

USSRC had received delinquency notices from NASA regarding its failure to provide reports that were required under the CAN. Ex. 30, CExs. 58, 90, 92, 104. It is undisputed that

USSRC did not provide NASA with the delinquent reports after receiving such notices, and even after Erickson advised Harbour and Space Race on November 29, 2017 that NASA would pay the third year of funding (subject to 2018 appropriation) if USSRC would do so.

Harbour's notes of the November 29 conference call further reflect that he was "surprised" and "concerned" about Erickson's comments, leading him to speak with Barnhart. Harbour testified that he advised Barnhart of the conference call, including that USSRC needed to provide the delinquent reports to NASA so that USSRC would receive the final payment of \$1.5 million. Barnhart rejected Harbour's request, claiming that she understood that NASA would not provide further funding even if the delinquent reports were provided to NASA. Barnhart told Harbour that "she was not worried about it." Ex. 42 at 5579.

Matays also reached out to Barnhart immediately following the November 29 conference call, to make sure that the delinquent reports would be prepared and provided to NASA. CExs. 95, 99. Barnhart was unresponsive to Matays' multiple emails and voice mail messages. Eventually, Barnhart replied to Matays on December 11, 2017, stating: "Let's don't get in a hurry. We are expecting written direction from NASA. Let's see what they say officially." Ex. 99.

During a telephone conference call on December 6, 2017, Erickson further informed Harbour and representatives of Space Race that USSRC and NASA had jointly decided to stop the Space Racers project. Ex. 42 at 5580.

Finally, in a letter, dated December 20, 2017, NASA advised USSRC that funding for Space Race was terminated. Ex. 40. In January 2018, after the present arbitration had been commenced, USSRC reached out to NASA, asking it for the first time to reconsider the termination. Ex. 47. NASA did not agree to do so.

Analysis

Space Race's claims in this case arise from USSRC's non-payment of the final installment of \$1,313,902 to Space Race under the MoA. Space Race alleges that USSRC breached the CAN and MoA by failing to provide NASA with required reports, and by agreeing jointly with NASA to terminate the third year of funding for Space Race, especially when both NASA and USSRC knew and agreed that Space Race should front load the three years of work (and expenses) into the first two years.

Termination of the CAN

On December 20, 2017, Space Race received a copy of a letter from Erickson to USSRC terminating the CAN: "Per paragraph 1800.921(b) of your award letter, NASA will not be providing additional funding to your award and thus will be changing the period of performance to end on January 31, 2018." Ex. 40. (By way of reference, the original period of performance under the CAN had extended to February 2019. Ex. 14.)

Paragraph 1800.921(b) of the CAN states: "The recipient agrees to perform work up to the point at which the total amount paid or payable by the Government approximates but does not exceed the total amount actually allotted to this award. NASA is not obligated to reimburse the recipient for the expenditure of amounts in excess of the total funds allotted by NASA to this grant or cooperative agreement. The recipient is not authorized to continue performance beyond the amount allocated to this award." This section does not provide any apparent basis for termination of the CAN. The termination letter makes no reference to any substantive section of the CAN as a basis for ceasing funding. Specifically, there was no mention of the lack of scientific progress of Space Racers, whether federal funding would become available in 2018

(subject to appropriation) by NASA or of any issue concerning the continued relevance of Space Racers to NASA. Ex. 14; Tr. 341-42.

The single most critical communication among the parties was the November 29, 2017 conference call during which Erickson stated that third year funding would be provided if USSRC produced its delinquent reports and sent a letter to NASA requesting the third year of funding. The substance of Erickson's statements was confirmed by everyone on the call – Harbour, Matays, Schmidt and Netting. It also was confirmed in Harbour's contemporaneous notes (Ex. 42) as well as Schmidt's contemporaneous notes. REx. 144. The substance of Erickson's statements was further confirmed by subsequent actions – both Harbour and Matays reached out to Barnhart to ask her to comply with Erickson's requests regarding the requested letter and delinquent reports.

At the Hearing, no one from USSRC or NASA contradicted the substance of Erickson's statements on the November 29 conference call.

In support of its position, USSRC points to Erickson's statement in the subsequent December 20 termination letter that the decision to terminate "is not influenced by any action on the part of the Alabama Space Science Exhibit Commission." Ex. 40. That statement is inconsistent with the statements that Erickson had made during the November 29 conference call, and appears gratuitous. Moreover, that statement in the termination letter is hearsay, especially given NASA's refusal to allow Erickson to testify under oath at the Hearing following service of an AAA subpoena and an express request by the Arbitrators during the Hearing for her live testimony.

The Arbitrators rely upon the credible evidence presented at the Hearing, including the statements of Erickson, and Harbour's testimony and contemporaneous notes -- which are

admissions against USSRC's interest and therefore come within an exception to the hearsay rule -- plus the credible testimony Matays, Schmidt and Netting. All this evidence is weighed against the unsworn statement of Erickson in the termination letter. As a result, the Arbitrators conclude that Erickson's statement in the termination letter is not credible and, as a result, accord it no weight.

Moreover, Erickson's statement is contradicted by NASA's in-house counsel in his August 15, 2018 letter to the Arbitrators in which he stated that USSRC's failure to produce reports that were required was in fact one of the reasons for terminating the third year of funding under the CAN. In his unsworn after-the-fact letter, NASA's counsel asserted three reasons for the termination of the CAN: "(1) [USSRC] was deficient in its reporting requirements during its two years of performance under the [MoA], failing to produce mandatory reports that would have tracked the program's effectiveness at promoting STEM education, (2) continued funding was unavailable due to a continuing resolution in effect at the time [December 20, 2017], and (3) Space Racers had become commercially successful, which obviated NASA's purpose for funding the [USSRC] work." Ex. 48, p. 4.

However, the commercial success of Space Racers could not have been known by NASA or USSRC, when in fact they made no financial inquiry at the relevant time. Tr. 327-28, 475-76. According to credible sworn testimony and documentation offered by Space Race, Space Racers was not a commercial success, and that financial reality had been explained to NASA. REx. 144, Tr. 173-74, 844-45. Accordingly, this hearsay assertion by NASA counsel is given no weight.

Furthermore, in December of 2017, funding for 2018 was not yet known, and there was no apparent reason not to wait and see what the funding would be, especially since the term of the CAN extended to February 2019. In fact, on or about March 21, 2018, NASA, including its

educational programs, was fully funded for 2018. CEx. 105, Tr. 55. Therefore, termination of the CAN on that basis was premature, and again appears to have been an effort to deprive Space Race of payment for its frontloaded work, regardless of whether the 2018 appropriation was received.

Additional inconsistent justifications were offered by NASA and/or USSRC for the termination of funding, including “programmatic decisions” . . . “the government has other priorities” . . . and Space Race signed an agreement with Sprout.” Exs. 35, 38, Tr. 202. None of these stated reasons were substantiated by any credible evidence presented at the Hearing, and raise further questions regarding the overall credibility of certain representatives of USSRC and NASA.

The only plausible explanation that remains for NASA’s decision to terminate the CAN was USSRC’s failure to submit periodic reports to NASA, as required under the CAN, even upon receipt of delinquency notices. Exs. 30, 48, p. 4, CExs. 58, 90. This conclusion is consistent with Erickson’s representations during the November 29, 2017 conference call. Accordingly, the Arbitrators conclude that USSRC breached the CAN by failing to submit reports that were mandatory under the CAN, or to remedy such delinquencies.

Breach of the MoA

Generally, every contract has embedded within it a duty of good faith and fair dealing. This is true under Alabama law. However, there is no actionable claim solely for breach of the duty of good faith and fair dealing under Alabama law. *Tanner v. Church’s Fried Chicken, Inc.*, 582 So.2d 449, 452 (Ala. 1991). Therefore, the Arbitrators have considered whether USSRC breached the terms of the MoA.

When USSRC was advised repeatedly by NASA of its failure to submit reports required pursuant to the CAN, USSRC did nothing. Erickson clearly told Harbour and Space Race that all USSRC had to do was submit the delinquent reports, and write a letter to NASA requesting third year funding. Tr. 170-71. However, following Harbour's report to her regarding the November 29, 2017 conference call, Barnhart did nothing. When Matays sent multiple emails and left multiple voice mail messages for her, Barnhart initially ignored all communication from Matays. In one such email, dated November 29, 2017, Matays wrote: "We learned that a decision had been made not to fund year 3 of the Space Racers project. Kristen made clear, however, that a memo from you requesting the funding continue (together with some remedial action) could allow the 3rd year of funding to continue as planned." CEx. 95. When Barnhart belatedly replied to Matays' email on December 11, 2017, Barnhart wrote: "Let's don't get in a hurry. We are expecting written direction from NASA. Let's see what they say officially." Ex. 99. This response, disingenuous at best, was made when Barnhart claims to have "known" that further funding would be withheld by NASA. Barnhart evidenced no sense of outrage or even unhappiness over the termination. Tr. 321-23. Instead, in a private email, Barnhart thanked Erickson for sending the termination letter. ("Thank you Kristen. You can call me anytime I can support you or NASA.") Ex. 38.

Harbour spoke with Erickson again on December 6, 2017. His notes of that conversation state: "Kristen called me and we discussed Space Racers. Kristen informed me that USSRC & NASA had jointly decided to stop the Space Racers project." Ex. 42 at 5580. Harbour testified that only Barnhart could have participated in such a joint decision on behalf of USSRC. Tr. 348. He also testified that Barnhart and Erickson were discussing funding for 2018 as early as 2016 and again in June 2017. Barnhart herself wrote an e-mail to Matays in June of 2017 stating that

she would provide Erickson with her own “recommendation” as to whether to provide year 3 funding to Space Race. CEx.72; Tr. 371. Yet conspicuously absent from Barnhart’s testimony was any statement that she recommended to NASA that third year funding should be paid to Space Race. Instead, in June of 2017 Barnhart told Harbour that there would not be funding for year three of the CAN. Tr. 152-53, 330-31.

According to Kim Whitson, USSRC’s expert witness, termination of a grant/cooperative agreement “must be reserved for exceptional situations that cannot be handled any other way.” Tr. 991-92. There was no evidence presented at the Hearing that NASA was confronted by any exceptional situation.

The CAN provided: “Renewal is based on satisfactory progress and availability of funds.” Ex. 14, p. 9. Space Race had fully performed under the MoA; it did everything that it was required to do and did it well. There was no credible evidence submitted at the Hearing that Space Race had breached its contract performance obligations in any way. All that remained was for Space Race to be paid for the work that it had performed

The term of the CAN as executed extended through February 1, 2019. Ex. 14, at 5859. There was no reason, other than USSRC’s breaches, for NASA to terminate the MoA prematurely by “changing the period of performance to end on January 31, 2018” (Ex. 40), prior to the time Congress would be acting on NASA’s 2018 appropriation request. The only other plausible explanation is that NASA was trying to avoid paying Space Race for the third year of the CAN, a plan which Erickson said was jointly decided with USSRC. This was done only after Space Race had frontloaded all of the product development work with the express agreement of USSRC and NASA, which work benefitted both NASA and USSRC.

USSRC disingenuously claims that Space Race breached the MoA by accelerating the work schedule. However, the Rescope expressly provided that Space Race would complete the work in less than two years, and be paid over three years. Ex. 7, Ex A, p. 2. Therefore, it was anticipated that invoices would be received by USSRC prior to receipt by USSRC of all of the funds from NASA. In any event, NASA never cited the accelerated work schedule and billing as a basis to terminate the CAN.

The MoA provides that, in the event of a dispute, “the parties shall, first, attempt to resolve said dispute in good faith between them.” Ex. 7, ¶ 6. In fact, Matays specifically invoked that provision of the MoA in his December 11, 2017 email to Barnhart. Ex. 99, Tr. 393. But Barnhart never responded to Matays’ invocation and no one else on behalf of USSRC did anything pursuant to the provision.

Taken as a whole, the evidence supports the conclusion that Barnhart did in fact jointly decide with NASA, or at a minimum recommend to Erickson, that third year funding to Space Race not be provided by NASA to pay for the work Space Race had already performed. In furtherance of that decision, Barnhart directed Harbour not to cure USSRC’s breaches of its CAN reporting obligations. She did not write a letter to Erickson requesting the third year funding at any time prior to NASA’s termination of the CAN. Barnhart did nothing to “resolve the dispute” - - even when told by NASA how to do so - - to put Space Race in the position to receive the final year of funding for the front loaded work it had already fully performed. Barnhart did nothing to prevent the premature termination of the CAN, and in fact participated in making it happen. For these reasons, USSRC’s argument that it was not obligated to pay to Space Race third year funding which it never received from NASA is unavailing. A party cannot

lawfully act in this manner and then seek to be excused for its wrongful conduct when the funding does not materialize because of its own actions and its failures to act.

Based on the evidentiary record, we conclude that USSRC's conduct materially breached its obligations to Space Race under the MoA, materially breached the CAN, and caused Space Race to fail to receive the third year of funding from NASA. Ex. 42 at 5580, Tr. 371.

USSRC's Sovereign Immunity Defense

In its Answer to Statement of Claim, USSRC asserted a defense of sovereign immunity because USSRC is an agency of the State of Alabama. Answer to Statement of Claim, par. 19. At the Hearing, USSRC's counsel confirmed to the Arbitrators that USSRC was not and would not be asserting a sovereign immunity defense. Tr. 574-75. The Arbitrators therefore hold that USSRC has waived its right to assert such defense, either: in this proceeding; in any judicial review of this award; in any action brought by Space Race to confirm, enforce or execute upon this award; and in any action by USSRC to vacate this award.

Administrative Costs and Arbitrator Compensation

The MoA does not provide for the award of administrative costs and arbitrator compensation. Nor have both parties requested an award of administrative costs and arbitrator compensation. Accordingly, the administrative fees and expenses of the American Arbitration Association totaling \$19,900 and fees and expenses of the arbitrators totaling \$118,988.75 shall be borne as incurred.

Attorney's Fees

The MoA does not provide for the award of attorney's fees or related expenses. Nor have both parties requested an award of attorney's fees and related expenses. Accordingly, attorney's fees and related expenses shall be borne as incurred.

Award

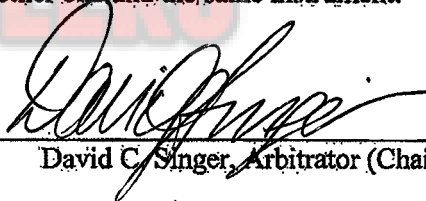
USSRC shall pay Space Race the principal amount of \$1,313,902, representing the remaining unpaid amount under the MoA. In addition, interest thereon shall be calculated at the annual rate of 6% pursuant to Alabama law, *Rhoden v. Miller*, 495 So.2d 54, 58 (Ala. 1986), from April 22, 2018 (30 days following the date by which the federal government funded NASA's educational programs (Claimant's Post Trial Brief, p. 26) through December 14, 2018, totaling \$51,680.

The total amount of \$1,365,582 (\$1,313,902 + \$51,680) shall be paid so as to be received by Space Race by December 14, 2018,

This Final Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

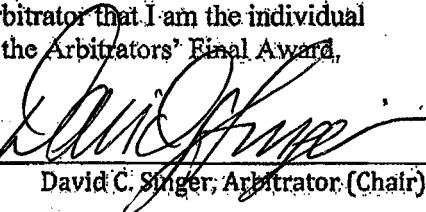
This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Dated: November 13, 2018

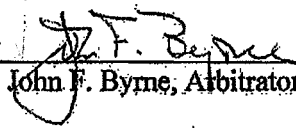

David C. Singer, Arbitrator (Chair)

I, David C. Singer, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Arbitrators' Final Award.

Dated: November 13, 2018
CHOW LAI CHU
Notary Public, State of New York
No. 01CH4808062
Qualified in Suffolk County
Commission Expires March 30, 2022


David C. Singer, Arbitrator (Chair)

Dated: November 9, 2018


John F. Byrne, Arbitrator

I, John F. Byrne, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Arbitrators' Final Award.

Dated: November 9, 2018

Marilyn N. Goldman
Marilyn N. Goldman
Notary Public, State of New York
No. 01GO6571865
Qualified in Kings County
Commission Expires June 30, 2022

John F. Byrne
John F. Byrne, Arbitrator

Dated: November 12, 2018

Reid L. Ashinoff
Reid L. Ashinoff, Arbitrator

I, Reid L. Ashinoff, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is the Arbitrators' Final Award.

Dated: November 12, 2018

Reid L. Ashinoff
Reid L. Ashinoff, Arbitrator

Sworn before me this 12th day of November, 2018

Danielle Rosen

DANIELLE ROSEN
Notary Public, State of New York
No. 01RO6134211
Qualified in Queens County
Commission Expires September 26, 2021



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