

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SMARTENERGY CONTROL SYSTEMS INC.,

Claimant,

OPINION
AND
ORDER

02-C-0602-C

v.

WESTFALIA-SURGE, INC.,

Respondent.

Respondent Westfalia-Surge Inc., has brought this action to enforce an arbitration award against claimant SmartEnergy Control Systems, Inc. Claimant commenced the arbitration because of an alleged breach of the parties' distributorship agreement. The arbitrator ruled in favor of respondent, voiding the agreement after finding that claimant had fraudulently induced respondent to enter into it. The arbitrator also awarded the "costs" of the arbitration to respondent, without specifying an amount. The parties dispute the "costs" to which respondent is entitled. Claimant argues that "costs" should be interpreted as being synonymous with the fees and expenses of the American Arbitration Association,

which the arbitrator directed claimant to pay. Respondent contends that it is entitled to reimbursement for its own costs, in addition to the amounts that it has already paid to the AAA for its fee and expenses, noting that both the arbitration agreement and the award refer to the “costs” of arbitration separately from the “fees and expenses” of the AAA. Although I question the merit of claimant’s interpretation of the award, I cannot resolve the dispute because this court does not have subject matter jurisdiction to hear this case.

Generally, a federal court has jurisdiction to hear a case in three instances: (1) when the complaint raises a federal question, 28 U.S.C. § 1331; (2) when the parties are citizens of different states and the amount in controversy is greater than \$75,000, 28 U.S.C. § 1332; and (3) when a state law claim is part of the same case or controversy as a federal law claim that may be considered under § 1331, 28 U.S.C. § 1367. In its petition, respondent alleges that both federal question and diversity jurisdiction are present in this case. In its answer, claimant agrees. Although this agreement might seem to resolve the issue, the court has an independent obligation to insure that subject matter jurisdiction exists. Wild v. Subscription Plus, Inc., 292 F.3d 526 (7th Cir. 2002).

In support of federal question jurisdiction, respondent relies on 9 U.S.C. § 9. That statute is part of the Federal Arbitration Act and allows parties to petition a court to confirm an arbitration award. However, the Court of Appeals for the Seventh Circuit has stated repeatedly that the FAA does not supply a basis for federal jurisdiction under 28 U.S.C. §

1331 on its own. Caudle v. American Arbitration Association, 230 F.3d 920 (7th Cir. 2000); In Minor Prudential Securities, Inc., 94 F.3d 1103, 1105 (7th Cir. 1996); Transportation Cybernetics, Inc. v. Forest Transit Committee, 950 F.2d 350 (7th Cir. 1991). Before a federal court may confirm an arbitration award under 9 U.S.C. § 9, there must be an independent basis for jurisdiction. Perpetual Securities, Inc. v. Tang, 290 F.3d 132 (2d Cir. 2002); General Atomic Co. United Nuclear Corp., 655 F.2d 968 (9th Cir. 1981); Wisconsin Commissioner of Insurance v. California Reinsurance Management Corp., 819 F. Supp. 797 (E.D. Wis. 1993). In this case, the underlying dispute was a question regarding state contract law, not a federal question that would provide a basis for jurisdiction.

In support of its assertion that there is diversity jurisdiction, respondent has submitted an affidavit in which its counsel avers that respondent is incorporated in Delaware and has a principal place of business in Wisconsin, while claimant is incorporated in Vermont and has a principal place of business in Vermont. In its petition, respondent alleges that the amount in controversy “in the arbitration” exceeded \$75,000. In counsel’s affidavit, he avers that claimant sought over \$800,000 in damages in the arbitration proceedings.

Although the amount in controversy in the arbitration proceedings may have exceeded \$75,000, this does not support a finding that the amount in controversy *in this*

court is sufficient to satisfy the jurisdictional minimum. The determination whether jurisdiction exists is made *as of the time the case is filed in federal court*. Uhl v. Thoroughbred Technology and Telecommunications, Inc., 309 F.3d 978, 983 (7th Cir. 2002); Workman v. United Parcel Service, Inc., 234 F.3d 998, 1000 (7th Cir. 2000). Claimant is not challenging either the arbitrator's decision regarding the breach of contract issue or the arbitrator's decision directing claimant to pay the fees and expenses of the American Arbitration Association. At the time this case was filed, the only amount in controversy was that of the additional costs to which respondent claims it is entitled, a sum of less than \$50,000. See Caudle, 230 F.3d at 922-23 (value of underlying arbitration claim is not relevant to determining amount in controversy when underlying claim is not part of dispute in federal court). Even if I included the fees that respondent previously paid to the AAA that claimant was directed to reimburse (and which claimant agrees it must pay), the amount is still less than \$75,000. The amount alleged by the plaintiff in the complaint determines the amount in controversy unless it appears to a legal certainty that the claim is for more or less than that amount. Rexford Rand Corp. v. Ancel, 58 F.3d 1215, 1218 (7th Cir. 1995). There is no reason to believe that respondent would be entitled to recover more costs than it alleged. Thus, I cannot conclude that there is diversity jurisdiction in this case.

Because respondent has failed to show that this court has subject matter jurisdiction under 28 U.S.C. §§ 1331 or 1332, this case must be dismissed. Respondent may pursue its

claim in state court, if it wishes.

ORDER

IT IS ORDERED that respondent Westfalia-Surge, Inc.'s motion to confirm the arbitration award is DENIED and this case is DISMISSED for lack of subject matter jurisdiction.

Entered this 7th day of May, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge