

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of the Arbitration between :
NATIONAL UNION FIRE INSURANCE :
COMPANY OF PITTSBURGH, PA, on behalf of :
itself and each of the related insurers that provided :
coverage to Respondents, :

17-CV-2946 (VEC)

ORDER

Petitioner, :

-against- :

BEELMAN TRUCK COMPANY, BEELMAN :
LOGISTICS, LLC, :
GRANITE CITY SLAG, LLC, BEELMAN RIVER :
TERMINALS, INC., RACEHORSE :
INVESTMENTS, LLC, TRANSHOLD, INC., :
BEELMAN MATERIALS, LLC, BEELMAN AG :
SERVICE, LLC, AND TRANSLOAD REALTY, :
LLC, :

Respondents. :
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VALERIE CAPRONI, United States District Judge:

This case represents Round Two in federal court of a dispute between the parties regarding an arbitration. Round One was initiated by a Petition to Compel Arbitration. *See Nat'l Union Fire Ins. Co. v. Beelman Truck Co.*, 15 CV 8799 (AJN) (hereafter, "8799 Action"). Judge Nathan granted that petition and ordered the parties to arbitration. The parties were ordered to select their arbitrators by September 2016. Memorandum & Order, Dkt. 81, 8799 Action. Since then, there has been a fair amount of back and forth between the parties; the current state of play is that each side has selected its party arbitrator, but the party arbitrators have not selected an umpire. Petitioner now asks the Court to select the umpire. For the reasons that follow, the Court GRANTS the Petition and appoints PETER BICKFORD as the umpire for this arbitration.

The parties have a contract that includes an arbitration provision. Verified Petition for the Appointment of an Umpire (“Pet.”) ¶ 25, Dkt. 5. Under the terms of the arbitration agreement, the parties’ arbitrators are supposed to appoint the umpire, but they have not done so. Petitioner, relying on the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1 *et seq.*, and the arbitration agreement itself, asks the Court to appoint an umpire. Respondents argue that the Petition should be denied and the party arbitrators should be ordered to select one of the candidates before them. Alternatively, Respondents request that the Court select one of Respondents’ candidates. Respondents’ Memorandum in Opposition to Petitioner’s Petition for the Appointment of an Umpire (“Resp. Mem.”) at 3, 13, Dkt. 39.

Having reviewed the parties’ submissions, the Court concludes that it has the power pursuant to the FAA and the parties’ agreement to appoint the umpire. Both parties named their party arbitrator on September 15, 2016, but the party arbitrators have failed to agree on an umpire. Pet. ¶¶ 33, 35, 63. Pursuant to the parties’ agreement, “if the two arbitrators fail to agree on a third party arbitrator within 30 days of their appointment, either party may make application to a court of competent jurisdiction in . . . New York.” *Id.* ¶ 38. That is consistent with section 5 of the FAA, which, upon application of a party to the dispute, directs the district court to “designate and appoint an arbitrator . . . or umpire, as the case may require,” following “a lapse in the naming of an arbitrator . . . or umpire.” 9 U.S.C. § 5. More than thirty days have elapsed since the naming of the party arbitrators, and it is undisputed that they have not agreed on an umpire.

Pursuant to the parties’ agreement, arbitrators (including the umpire) “must be executive officers or former executive officers of property or casualty insurance or reinsurance companies or insurance brokerage companies, or risk management officials in an industry” similar to that of Respondents (in this case, trucking). Pet. ¶ 38. In accordance with that provision, the Court has

before it eight candidates: five proposed by Petitioner, three of which Petitioner proposed prior to this litigation, and three proposed by Respondents. *Id.* ¶¶ 46-48. All of Petitioner’s candidates have deep experience in the insurance and reinsurance business, *see* Petitioner’s Memorandum of Law in Support of Its Petition for the Appointment of an Umpire (“Pet. Mem.”) at 19-20, Dkt. 3; all of Respondents’ candidates have deep experience in the risk management aspects of the trucking business, *see* Resp. Mem. at 5-6, 12-13. Thus, the selection of any as the umpire would be appropriate.

Respondents object to Petitioner’s candidates because all are certified by AIDA Reinsurance and Insurance Arbitration Society (“ARIAS”), a nonprofit corporation dedicated to “improv[ing] the insurance and reinsurance arbitration process for the international and domestic markets.” Pet. ¶ 50; Pet. Mem. at 8, 15. According to Respondents, the process for becoming ARIAS-certified is skewed towards those with insurance company experience and, therefore, ARIAS-certified arbitrators are more likely to be partial to the insurance company. Resp. Mem. at 15.¹ Respondents argue that the contract does not require that the umpire be certified by ARIAS or by any other arbitration association, such as the American Arbitration Association (“AAA”), and they urge the Court not to place special emphasis on whether a candidate is ARIAS-certified. *Id.* at 8, 15.

Petitioner objects to Respondents’ candidates because they do not appear to have experience with arbitration, and Petitioner believes that such experience is necessary to be an effective umpire. Pet. Mem. at 9.

The Court agrees with Respondents that the parties’ agreement does not require ARIAS certification or specific arbitration experience in order to serve as the umpire. *See* Pet. ¶ 38.

¹ There is no evidence in the record from which the Court can credit Respondents’ argument that ARIAS-certified arbitrators are partial to insurance companies because of their backgrounds.

Nevertheless, reason dictates that the umpire, who, by virtue of being the neutral in the panel, needs to manage the arbitration “in an organized, efficient, and fair manner,” *In re Travelers Indem. Co.*, 3:04-MC-196 (TPS), 2004 WL 2297860, at *3 (D. Conn. Oct. 8, 2004), should be an experienced arbitrator. None of the candidates proposed by Respondents appears to have any experience as an arbitrator or as an umpire. One candidate proposed by Respondents, John Spiros, is represented to have “a vast amount of experience dealing with mediations,” but there is no indication that experience was *as a mediator* as opposed to *as a participant*. Affirmation of Samuel J. Thomas in Support of Petitioner’s Petition to Compel the Appointment of an Umpire (“Thomas Aff.”), Ex. Y at 1, Dkt. 6-26. Similarly, Joel Paska has experience as an in-house attorney at several trucking companies where he appears to have had some responsibility overseeing the company’s participation in arbitrations, Thomas Aff., Ex. AA at 1, Dkt. 6-28, but there is no indication in his resume that he has ever served as an arbitrator himself. *See* Thomas Aff., Ex. AA.

In contrast, all of Petitioner’s candidates have a wealth of experience serving as arbitrators and as umpires. Of the three candidates whose names were exchanged prior to this litigation, Peter Bickford is the most qualified to serve as an umpire in this case. Thomas Aff., Ex. S, Dkt. 6-20. Mr. Bickford has been an officer of both life insurance and property and casualty insurance companies. *Id.* at 1-2. He has been appointed as an umpire in twenty-four arbitrations, *id.* at 2; in twelve of those arbitrations, he acted as umpire through to a final award after an evidentiary hearing, *id.* at 3. He has the experience to serve as the umpire in this case, and the Court finds that he is the best candidate to manage this arbitration.²

² The Court notes that to the extent alleged partiality is really Respondents’ concern (rather than simply wanting to delay the arbitration), they should have proposed candidates with arbitration experience who were not ARIAS-certified. Both AAA and JAMS have extensive rosters of experienced arbitrators. It is hard for the Court to believe that Respondents could not have found someone at one of those organizations who has experience in trucking or insurance *and* has arbitration experience.

Accordingly, the Court exercises its authority to appoint Mr. Bickford as umpire. As that is the only relief sought in this case, the Clerk of Court is respectfully directed to close the case, without prejudice to either party reopening the case within thirty days if Mr. Bickford is unable or unwilling to serve as umpire in this matter. **Any application to reopen must be filed within thirty days of this Order**; any application to reopen filed after that date may be denied on that basis alone.

SO ORDERED.

Date: July 17, 2017
New York, New York

A handwritten signature in blue ink, reading "Valerie Caproni", is positioned above a horizontal line.

VALERIE CAPRONI
United States District Judge