

[REDACTED]

In the Matter of the Arbitration Between

[REDACTED]
Claimant,

and

INTERIM AWARD

[REDACTED]
Respondent.

This dispute concerns the proper value of the lump-sum retirement benefit due to the Claimant, [REDACTED] ([REDACTED] or "Claimant"), former Chief financial Officer of [REDACTED] (" [REDACTED] or "Respondent"). An arbitration hearing was held on February 23-25, 2009, in [REDACTED], following which the parties submitted post-hearing briefs.

The parties agree that determination of the proper value of the lump-sum retirement benefit due to Claimant requires the interpretation of two agreements between Claimant and Respondent: (1) Claimant's "Executive Employment Agreement"; and (2) the "Agreement and General Release" signed in connection with Claimant's resignation ("Separation Agreement"). There are two issues in dispute with regard to computing the lump-sum amount: (1) the correct date for setting of the applicable interest rate; and (2) the correct Pension Benefit Guaranty Corporation ("PBGC") interest table.

Date for Setting of the Applicable Interest Rate

Section 2(g) of the Termination Agreement plainly and unambiguously requires that the lump-sum benefit "shall be determined as of the date of termination." To the

extent Respondent believed that this date was inappropriate for any reason, it was incumbent on Respondent to seek written modification of the Termination Agreement. The Arbitrator therefore finds that the correct date for setting the applicable interest rate is December 31, 2005.

Correct PBGC Table

Section 6(b)(iii) of the Executive Employment Agreement provides for the computation of the amount of the lump-sum retirement benefit due “on the basis of the then prevailing PBGC interest and mortality table for immediate annuities.” Respondent contends the correct PBGC table is the table entitled “Valuing immediate and deferred annuities.” Claimant contends that the correct PBGC table is the table entitled “Lump Sum Interest Rates for Private-Sector Payments.”

Based upon the plain and unambiguous language of the Executive Employment Agreement, the Arbitrator finds that the correct PBGC table is the table entitled “Valuing immediate and deferred annuities,” which is the only PBGC table that has the term “immediate annuities” in its title. Under these circumstances, to the extent Claimant’s counsel at the time of the agreement intended that the parties would use the table entitled “Lump Sum Interest Rates for Private-Sector Payments,” it was incumbent upon him to specify that table, which notably does not contain any of the words found in the Executive Employment Agreement.

Pre-Award Interest

The parties agree that both the Executive Employment Agreement and the Separation Agreement are governed by New York law, which in turn governs the amount of interest in a breach of contract action. New York's prejudgment interest rate for breach of contract cases is 9% per annum, accruing on a simple, rather than compound basis. Claimant is therefore entitled to interest on the principal amount due from July 1, 2006, to the date of the Final Award.

Attorney's Fees and Costs

The Executive Employment Agreement provides for an award of attorney's fees and costs to Claimant in the event he prevails "in a dispute arising out of or under" that agreement. Claimant, however, has not prevailed on the interpretation of the Executive Employment Agreement, and is therefore not entitled to an award of attorney's fees or costs. Although Claimant prevailed on the interpretation of the Separation Agreement, there is no provision for an award of attorney's fees or costs to Claimant in that agreement. The Arbitrator therefore finds that each party must bear its own attorney's fees and costs in connection with this arbitration.

Conclusion

The Arbitrator finds that the correct date for setting of the applicable interest rate is the date of Claimant's termination (December 31, 2005), and that the correct PBGC table is the table entitled "Valuing immediate and deferred annuities."

The parties are requested to meet and confer in an effort to agree upon a Final Award for submission to the Arbitrator that includes the lump-sum retirement benefit due

to Claimant pursuant to this Award, plus pre-award interest calculated to a date set for entry of the Final Award. In the event the parties are unable to agree, counsel are directed to submit proposed Final Awards to the Arbitrator no later than April 24, 2009.

This is an Interim Award. The Arbitrator expressly retains jurisdiction to consider and rule upon further issues arising from the submitted dispute and/or this Interim Award.

SO ORDERED.



KATHLEEN A. ROBERTS
Arbitrator

April 6, 2009

_____X
 _____ :
 Claimant, :
 v. : Arbitration No. _____
 _____ : STIPULATED
 Respondent. : FINAL AWARD
 _____X

Pursuant to the Interim Award entered on April 6, 2009, the parties stipulate and agree to a final award to claimant in the amount of \$608,600.00, plus interest through April 24, 2009 in the amount of \$154,267.60.

Dated this 24th day of April, 2009.

ENTERED:

Arbitrator

AGREED:



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