

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
International Arbitration Tribunal

Chongqing Senci Import & Export Trade Co.,
a Chinese corporation; and
Chongqing AM Pride Power & Machinery Co. Ltd.,

Claimants,

v.

ICDR Case No. 01-16-0001-4817

Smarter Tools, Inc., a Virginia corporation; and
DOES 1-20 inclusive,

Respondents.

FINAL AWARD

I, JAMES M. RHODES, having been designated in accordance with the rules and arbitration agreement herein and having been duly sworn, and having duly heard the proofs and allegations of the parties, do hereby AWARD as follows:

1. Claimants Chongqing Senci Import & Export Trade Co., Ltd ("SENCI") and Chongqing AM Pride Power & Machinery Co. Ltd ("AmPride")(SENCI and AmPride are collectively referred to as "SENCI") and Respondent SmarterTools Inc. ("STI")(SENCI and STI are hereinafter collectively referred to as the "Parties") have stipulated and

EXHIBIT
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agreed to certain facts for purposes of the Arbitration, and have made a Joint Agreement re Stipulated Facts for Arbitration dated June 23, 2017, signed by the Parties, which was marked as Exhibit 201 and is referred to and cited herein as the “Stipulation”.

2. SENCI is a business entity organized and existing under Chinese Law, and engaged in the manufacture, marketing and sale of gas-powered inverter generators (*See Stipulation*).
3. STI is an active Virginia corporation, in good standing under the laws of Virginia for all periods relevant to this matter.
4. This arbitration was commenced as a fairly straight-forward collection matter, wherein SENCI sought to obtain payment for generators that it had sold to STI. However, the dispute between the parties has grown to include claims, asserted in counterclaims and cross-claims, for lost future profits and other damage elements. Nevertheless, many of those claims did not withstand scrutiny in the proceeding.

Arbitration Proceedings

Claims:

1. The initial Demand for Arbitration, asserting breach of contract claims, was filed with the American Arbitration Association/International Centre for Dispute Resolution (AAA/ICDR) on April 27, 2016 by an attorney for STI.
2. Thereafter, on May 24, 2016 STI filed an Answer to the Demand and a Counterclaim while SENCI, on June 28, 2016, in reply, filed an Answer to

the Counterclaim and Amended Claim (addressed as counterclaim by SENCI in its document),

3. The parties exchanged documents, and obtained the documents of certain third parties.
4. There were seven days of evidentiary hearings, on June 26, 27, 28, 29, 30, July 2, and October 9, 2017. The hearings have been marked as closed effective December 21, 2017 upon receipt of the last submission from the parties.
5. The parties have agreed to a brief extension for the issuing of the final award.

Procedural Matters

1. SENCI objects to the testimony of Mr. Herbert Zukerman, an expert witness for STI, who testified on October 9, 2017 and Exhibits 390, 391, 391-A, 392 and 393 on the grounds that certain of his testimony and exhibits relating to his testimony do not constitute rebuttal testimony, or constitute hearsay. That testimony and those Exhibits do not constitute proper rebuttal evidence or testimony, or are otherwise subject to valid grounds for objection¹ and must therefore be excluded and stricken from the records.

Factual Background and Findings

¹ At the time of his testimony during the evidentiary hearing herein, the attorney for SENCI made a timely objection, and the arbitrator reserved his decision; this is his ruling on the objection.

1. Beginning in late 2011, SENCI entered into a course of dealing with STI pursuant to which STI ordered US\$56,337,256.57 worth of ST-AP2000i inverter gasoline generators ("AP2000i generators") from SENCI (Exhibit 306, see also Exhibits 18-351).
2. The documents Bates numbered "STI_000040" through STI 000075" constitute a complete set of the Purchase Orders for the ST-AP2000i inverter gas generators ordered by STI from SENCI. The information presented in the table provided in the documents Bates numbered "STI_00 accurately summarizes the purchase, delivery and payment data related to STI's purchase of ST-AP2000i inverter gas generators from SENCI. (Stipulation ¶6)
3. The amount due to SENCI from STI for the 17,212 delivered generators is US\$6,337,256.57, and STI paid a total of US\$3,245,312.00 to SENCI resulting in an initial unpaid balance due to SENCI from STI of US\$3,091,944.57 (see Stipulation ¶7).
4. Between March and early October, 2013, STI returned to SENCI in China, and SENCI agreed to accept 1,873 ST-AP2000i generators which had a value of US\$689,264.00, which is the product of the price (US\$368.00/unit) times the 1,873 units accepted by SENCI.
5. The value of the 1,873 generators, US\$689,264.00, has been credited by SENCI against the US\$3,091,944.57 unpaid balance owed to SENCI by STI, which leaves a remaining unpaid balance of US\$2,402,680.43, which

amount is due and owed to SENCI from STI in this proceeding.
(Stipulation ¶9)

6. Having heard all of the testimony, reviewed all of the documentary evidence and exhibits, I find that SENCI's claims are well-founded and supported by the evidence.
7. In the initial Answer to the Demand, dated May 24, 2016, and filed and signed by the attorney for STI, a claim was interposed on behalf of STI in the amount of US\$42,125,159, which is being treated herein as a counterclaim on behalf of STI (the STI Claim and counterclaim). STI further amended its counterclaim and increased it to US\$45,200,000.00. In purported support of this claim, STI offered testimony and document exhibits sponsored by its expert witness, Herbert Zukerman. Mr. Zukerman testified twice, and on the second occasion was presented as a Rebuttal witness, over the strong objection of SENCI. At his second appearance on October 9, 2017, he offered Exhibits 390, 391, 391-A, 392 and 393. He offered a new opinion, as opposed to an opinion on rebuttal to that he had given in his initial testimony. The new opinion was that STI's loss of future profit and loss of goodwill i.e. US\$22,009,808, as opposed to the US\$45,200,000 that he originally offered as his opinion in June 2017, or a drop of US\$23 million.
8. Having heard all of the testimony, reviewed all of the documentary proofs and exhibits, I do not find support for STI's claims, as set forth in the cross-claims and counterclaim, nor do I find the testimony of Expert

Witness Zukermasn given on October 9, 2017 to be credible. Therefore, I find that Mr. Zukerman's testimony on October 9, 2017 is not credible, does not constitute proper rebuttal evidence testimony and must be excluded.

Relief Awarded

1. Thirty days from the transmittal of this Award, Respondent STI shall pay to SENCI the amount of US\$2,402,680.43. Until full payment, this amount shall be subject to interest of eight per cent (8%), commencing on the date of the transmittal of this award.
2. The claims of STI against SENCI are denied.
3. Each side will bear its own costs and counsel fees
4. All other costs of this arbitration, including the compensation and expenses of the arbitrator, totaling US\$102,870.99, as well as the fees and expenses of the AAA/ICDR, totaling US\$45,020.00, shall be borne as incurred by the parties.
5. This Award is in full settlement of all claims submitted to this arbitration.

I hereby certify that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in New York, New York, United States of America.

Feb. 23, 2018

Dated