

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
PADUCAH DIVISION**

PHYTONYX, LLC

Case No. 5:22-cv-21-TBR

*Petitioner,*

v.

AMHEMP KENTUCKY LLC,

*Respondent.*

**Serve:** United States Corporation  
Agents, Inc.  
9900 Corporate Campus Drive,  
Suite 3000  
Louisville, KY 40223

**PETITION TO CONFIRM ARBITRATION AWARD**

Petitioner Phytonyx, LLC (“Phytonyx”), for its Petition to Confirm Arbitration Award against Respondent AmHemp Kentucky, LLC (“AmHemp”), alleges as follows:

**INTRODUCTION**

1. This is a petition to confirm the American Arbitration Association’s Commercial Arbitration Tribunal’s May 28, 2021 final arbitration award (“Final Award”) in favor of Phytonyx and against AmHemp in the amount of \$1,987,500 in the arbitration styled *Phytonyx, LLC v. AM Hemp Kentucky LLC*, AAA Case Number: 01-20-0005-5587.

2. Phytonyx seeks an order from this Court under Section 9 of the Federal Arbitration Act (“FAA”), [9 U.S.C. § 9](#), confirming the Final Award, and entry of judgment thereon pursuant to [9 U.S.C. § 13](#).

## **PARTIES**

3. Phytonyx is a limited liability company organized under Delaware law and with its principal office located in Ashland, Oregon. The members of Phytonyx are individual residents of the state of Oregon and Washington. For purposes of this Court's diversity jurisdiction, Phytonyx is a citizen of Oregon and Washington.

4. Upon information and belief, AmHemp is a limited liability company organized under Kentucky law with its principal office in Kentucky. Also upon information and belief, one of AmHemp's members is a Kentucky resident. It is further believed that no member of AmHemp is a citizen of Oregon or Washington. For purposes of this Court's diversity jurisdiction, AmHemp is a citizen of Kentucky.

## **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because this is a civil action between a citizen of Oregon and Washington, on one hand, and a citizen of Kentucky, on the other, and because the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue is proper in this judicial district pursuant to 9 U.S.C. § 9 and 28 U.S.C. § 1391 because the parties' arbitration agreement specifies that judgment on an award may be entered in any court having jurisdiction and a substantial part of the events or omissions giving rise to this claim occurred in Murray, Kentucky where AmHemp is located.

## **BACKGROUND**

7. Phytonyx is an Oregon-based company that produces hemp seeds. Phytonyx has developed proprietary agricultural practices that produce seeds which bear cannabis plants containing very low THC (less than .3%) and very high CBD (greater than 25%).

8. On or about May 29, 2019, Phytonyx entered into an agreement with AmHemp to supply 3,250,000 proprietary hemp seeds to AmHemp. (A copy of this contract is attached hereto as **Exhibit 1.**) In total, Phytonyx delivered \$2,925,000 worth of hemp seeds to AmHemp after it received a \$100,000 deposit from AmHemp.

9. AmHemp made another payment to Phytonyx in the amount of \$1,000,000 on or around October 10, 2019.

10. AmHemp did not make another payment to Phytonyx, leaving an unpaid principal balance of \$1,825,000.

11. On or around March 5, 2020, Phytonyx formally demanded full payment in the amount of \$1,825,000. AmHemp did not make any payment in response to this demand.

12. The parties' contract contained a provision requiring that Phytonyx's "Standard Terms and Conditions of Sale" governed their transaction. At the time the parties entered the contract, Phytonyx's Standard Terms and Conditions of Sale included a provision labelled "Dispute Resolution" that stated:

Any dispute, controversy or claim arising out of or in any way related to these terms or conditions of Sale and/or Purchase Order, Contract of Sale or any transaction contemplated hereby which cannot be amicably resolved by the parties shall be solely and finally settled by arbitration administered by the American Arbitration Association in accordance with its then in effect commercial arbitration rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(A copy of these Standard Terms and Conditions of Sale is attached hereto as **Exhibit 2.**) Phytonyx provided AmHemp a copy of these Standard Terms and Conditions of Sale in negotiating the contract.

13. Pursuant to the arbitration agreement incorporated into the parties' contract, Phytonyx filed a demand for arbitration with the American Arbitration Association on or around June 11, 2020. (A copy of Phytonyx's demand for arbitration is attached hereto as **Exhibit 3.**)

14. In its demand, Phytonyx asserted claims for breach of contract and unjust enrichment against AmHemp and sought damages in excess of \$1,825,000, as well as pre- and post-judgment interest, attorneys' fees, costs, and other relief.

15. The American Arbitration Association, pursuant to its Commercial Rules, appointed Mary J. Deits as arbitrator over this dispute.

16. AmHemp, represented by counsel, disputed the American Arbitration Association's arbitral jurisdiction. The arbitrator, however, entered an order on February 27, 2021 in which it held it had jurisdiction to arbitrate the dispute raised in Phytonyx's demand.

17. Phytonyx then moved for partial summary disposition in its favor, which the arbitrator granted in an order dated May 6, 2021. (A copy of this Award on Motion for Summary Judgment is attached hereto as **Exhibit 4.**) The arbitrator held Phytonyx was entitled to summary disposition in its favor on its breach of contract claim and awarded Phytonyx damages "in the amount of \$1,987,500.00 as well as statutory interest, attorney fees and costs." (*Id.* at p. 4.)

18. The arbitrator later entered a Final Award on May 28, 2021. (A copy of this Final Award is attached hereto as **Exhibit 5.**) In its Final Award, the arbitrator held that AmHemp breached its contract with Phytonyx and that Phytonyx was therefore entitled to damages in the amount of \$1,987,500 "as well as statutory interest." (*Id.* at p. 2.) The arbitrator also ordered that AmHemp must reimburse Phytonyx a total of \$8,802.50 representing AmHemp's share of the administrative fees and expenses incurred by the American Arbitration Association as well as the arbitrator's fees that Phytonyx had paid. The arbitrator's Final Award stated it was in "full

settlement of all claims submitted to this Arbitration,” and that “[a]ll claims not expressly granted herein as hereby denied.” (*Id.*)

19. AmHemp has made no payment to Phytonyx as required by the arbitrator’s Final Award.

**COUNT ONE (Confirm Arbitration Award under the Federal Arbitration Act)**

20. Phytonyx repeats and realleges the preceding paragraphs 1 through 19 as if fully set forth herein.

27. The Final Award is an enforceable final decision by the arbitrator in *Phytonyx, LLC v. AmHemp Kentucky, LLC*, American Arbitration Association Case No. 01-20-0005-5587.

28. Pursuant to 9 U.S.C. § 9, Phytonyx has brought this action within one year after the arbitrator issued the Final Award on May 28, 2021.

29. Phytonyx has notified AmHemp of this petition as required by 9 U.S.C. § 9.

30. Phytonyx has not made a prior petition to this Court of any other court for the relief it requests in this petition.

31. The Final Award has not been vacated under 9.U.S.C. § 10, or modified or corrected under 9 U.S.C. § 11, and there are no grounds for vacation, modification, or correction of the Final Award.

32. The arbitration proceeding in American Arbitration Association Case No. 01-20-0005-5587 and the resulting Final Award were in full compliance with the terms of the arbitration agreement incorporated into the parties’ contract at issue here.

33. By reason of the foregoing, the Court should issue an order confirming the Final Award and direct that judgment be entered thereon in the amount of at least \$1,996,302.50 (the \$1,987,500 amount ordered as damages for Phytonyx’s breach of contract claim and the \$8,802.50

amount ordered as AmHemp's share of the administrative costs and fees Phytonyx paid in the arbitration), in addition to pre- and post-judgment interest and attorneys' fees.

**WHEREFORE**, Phytonyx respectfully requests that this Court:

- A. Issue an order pursuant to 9 U.S.C. § 9 confirming the Final Award.
- B. Enter judgment thereon pursuant to 9 U.S.C. § 13.
- C. Award Phytonyx such other and further relief as this Court deems just and proper.

Respectfully submitted,

STOLL KEENON OGDEN PLLC

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