

## Fla. Court Nixes Doc Bid In Brazilian Power Co. Fight

By **Khorri Atkinson**

Law360 (January 31, 2020, 7:38 PM EST) -- A Florida federal judge on Friday overturned her initial order allowing an energy trader to subpoena a U.S.-based Brazilian executive for documents to be used in a pending arbitration in São Paulo over a disputed power purchase agreement, ruling that the request was granted without good reason.

U.S. District Judge Beth Bloom, whose **November decision** did not offer any reasoning, accepted Vega Comercializadora de Energia Ltda. executive Amadeu Cruz Barbosa Filho's **bid to vacate** the ex parte order. The subpoena order was sought by Bio Energias Comercializadora de Energia Ltda.

Bio Energias initiated arbitration against Vega in São Paulo, accusing the company of failing to comply with its obligations to deliver energy to Bio Energias under a series of power purchase agreements. Bio Energias alleged that Barbosa Filho and Romeu de Aguiar Pradines Jr. — another Vega executive subject to the November order — were involved in the negotiation and ultimate breach by Vega of its obligations under their deal. It also claimed they are suspected of fraudulently transferring some of Vega's assets in an effort to frustrate and circumvent the Brazil arbitration.

But Judge Bloom said in her eight-page ruling that despite Bio Energias' accusations in court filings, there's no evidence it has alleged those claims in arbitration.

"As such, the information sought may be relevant to Bio Energias's suspicion, but it does not appear to be directly relevant to the claim asserted by Bio Energias in the arbitration," the judge wrote. "The court initially granted the ex parte application without the benefit of the [defendants'] arguments."

Pradines hasn't entered an appearance in the case yet, according to the docket.

Judge Bloom also ruled that Bio Energias acknowledged it and Vega both agreed to be governed by the International Bar Association, which has rules regarding the request and production of evidence in international arbitration matters.

The judge added that International Bar Association rules "permit discovery from third parties, but set forth a specific procedure for such discovery." The Getulio Vargas Foundation, a private Brazilian think tank administering the arbitration, doesn't qualify under the statute as Barbosa Filho argued in his request to the court last November.

"As such, Bio Energias could have asked [Brazil's] arbitral tribunal, [as the rules suggest], to request the documents directly or request to be permitted to take the steps necessary to request the documents itself," Judge Bloom wrote. "There is no indication from the record that Bio Energias submitted either type of request to" the country's arbitral body.

Bio Energias had rejected Barbosa Filho's argument that Brazilian law only gives an arbitrator the right to request evidence under the arbitral body's rules. But the judge asserted that the energy trading company failed to acknowledge that International Bar Association rules require "at the very least that a party put the arbitral panel on notice of its efforts to obtain discovery."

"Moreover, the IBA Rules empower the arbitral tribunal to order a party to obtain documents or obtain itself any necessary documents," the judge added.

Andrew J. Bernhard of Bernhard Law Firm PLLC, who is representing Barbosa Filho, lauded the ruling in a statement to Law360. Bernhard contended that Bio Energias made many "mischaracterizations" of his client in its filings, "including factual misstatements as to his role and activity."

"We only sought to have a transparent and fair understanding of the purported proceedings in Brazil, with the respectful and fair enforcement of Brazil's process, laws, and constitutional rights in this U.S. court," the attorney added. "We are glad that our client has been vindicated."

Counsel for Bio Energias did not immediately reply to a request for comment.

Bio Energias said in its petition that the documents requested from the pair include all communications and paperwork that relate to the power purchase agreements, along with documents outlining the corporate structure of Vega's parent company, Interlagos Holding, and Sebring Capital Ventures LLC, which controls Interlagos. Pradines is the manager of Interlagos Holding and Barbosa Filho is the manager and owner of Sebring Capital. According to Bio Energias, both men are based in Florida.

Pradines and Barbosa Filho "directly or indirectly confirmed rumors that Vega was not capable of complying with its contractual obligations to deliver energy to its purchasers and, in violation of Vega's confidentiality obligations, publicly identified Bio Energias as one of the largest creditors of Vega and as one of the entities that would not receive the contractually stipulated supply of energy from Vega," Bio Energias said in its petition.

In doing so, the pair damaged Bio Energias by undermining the company's credibility in Brazil's energy market, Bio Energias said. Energy purchasers it had contracted with to trade the energy it receives from Vega started to question if Bio Energias could actually continue to trade, the company said.

Bio Energias Comercializadora de Energia Ltda. is represented by Francisco A. Rodriguez of Akerman LLP.

Barbosa Filho is represented by Andrew J. Bernhard of Bernhard Law Firm PLLC.

Counsel information for Pradines wasn't immediately available on Friday.

The case is In re Bio Energias Ex Parte Application Pursuant to 28 U.S.C. Section 1782, case number 1:19-mc-24497, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Caroline Simson. Editing by Nicole Bleier.