

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICK FITZGERALD, an individual,

Petitioner,

-against-

15 Civ. 6796 (CM)(FM)

THE BONDFACTOR COMPANY, LLC,
a Delaware limited liability company;
BUTCHERMARK FINANCIAL ADVISORS, LLC,
a Delaware limited liability company; and
GEORGE H. BUTCHER, III, an individual.

Respondents.

_____ X

MEMORANDUM DECISION AND ORDER

McMahon, CJ.:

BACKGROUND

Petitioner Fitzgerald, a former employee of Respondent BondFactor Company, LLC (“BondFactor”), commenced arbitration against Respondents through the American Arbitration Association. Petitioner alleged various claims, including wrongful termination, retaliation, breach of contract, and Fair Labor Standard Act (“FLSA”) violations.

On February 10, 2015, the Arbitrator entered a Partial Final Award (“PFA”) awarding Petitioner damages in the amount of (i) \$76,578.45 in unpaid wages under the FLSA; (ii) an additional \$76,578.45 as liquidated damages under the FLSA, pursuant to 29 U.S.C. § 216(b); (iii) \$3,302.86 in unreimbursed business expenses, plus prejudgment simple interest at the New York statutory rate of 9% accruing from January 15, 2014. (Petition to Confirm Arbitration (“Petition”); Ex. B)

On May 13, 2015, the Arbitrator entered the Final Award, which restated the damages awarded in the PFA, and awarded Petitioner an additional (iv) \$98,875 in attorneys’ fees pursuant to the FLSA, 29 U.S.C. § 216(b); and (v) \$17,978.46 in costs. (Petition; Ex. C)

INSTANT PETITION

Petitioner now seeks to confirm the Arbitrator's award and seeks pre-judgment interest at New York's statutory rate of 9% per annum on the award of unpaid wages, liquidated damages, and attorneys' fees and costs.

Respondents dispute that Petitioner is entitled to post-award, pre-judgment interest. They additionally argue that if the Court decides to award Petitioner any pre-judgment interest at all on these categories of damages, the interest rate should be calculated according to 28 U.S.C. § 1961 and not according to the New York statutory rate of 9%.

Neither party contends that the arbitration award should not be confirmed. Neither party disputes that the post-judgment interest on the award should be calculated at the federal rate, pursuant to 28 U.S.C. § 1961. And neither party raises any challenge to the Arbitrator's award of pre-judgment interest at New York's statutory rate of 9% from January 15, 2014 for the unreimbursed business expenses.

DISCUSSION

A. The Arbitration Award

An arbitration award is generally confirmed through a summary proceeding that converts a final arbitration award into a judgment of the court. *See Yusef Ahmed Algahanim & Sons v. Toys "R" Us, Inc.*, 126 F.3d 15, 23 (2d Cir. 1997); *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984). A district court must grant a petition to confirm an arbitration award unless one of the grounds for vacating or modifying the award is established. *Ottley v. Schwartzberg*, 819 F.2d 373, 377 (2d Cir. 1987). Here, neither party objects to confirmation of the award nor argues a basis for vacating or modifying it. Thus, the award is confirmed.

B. Pre-judgment Interest

In the absence of a statutory directive, the granting of post-award, pre-judgment interest rests with the discretion of the district court. *In re Waterside Ocean Navigation Co. v. Int'l Navigation, Ltd.*, 737 F.2d 150, 153–54 (2d Cir. 1984); *In re Arbitration Between Westchester Fire Ins. Co. v. Massamont Ins. Agency, Inc.*, 420 F. Supp. 2d 223, 226 (S.D.N.Y. 2005).

However, "in an action for violations of the Fair Labor Standards Act, prejudgment interest may not be awarded in addition to liquidated damages." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1064 (2d Cir. 1988); *see also Joiner v. City of Macon*, 814 F.2d 1537, 1539 (11th Cir. 1987). This is because, "among other purposes, liquidated damages compensate for the delay in receiving wages that should have been paid." *Brock*, 840 F.2d at 1064. To allow an employee to recover unpaid wages and liquidated damages, with interest, would have the effect of "allowing interest on interest." *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 715 (1945).

Petitioner has received the full amount of liquidated damages allowable under Section 16(b) of the FLSA. He may not additionally receive pre-judgment interest on the sums awarded under the FLSA for unpaid wages, and he certainly may not get "interest on interest" by having interest paid on liquidated damages.

The claim for attorneys' fees and costs arises under the FLSA, pursuant to 29 U.S.C. § 216(b), but the liquidated damages aspect of an FLSA award is specifically referable to the wage award, not to the costs of litigation. However, Petitioner points to no authority awarding pre-judgment interest on an attorneys' fee claim, and this Court is aware of none. I do not believe I have ever awarded pre-judgment interest on an award of attorneys' fees in any fee-shifting case. The Arbitrator certainly made no such award. Since post-award, pre-judgment interest is discretionary, I decline to award it on costs or attorneys' fees.

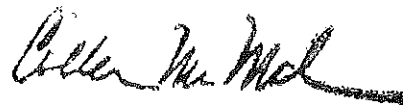
Petitioner was awarded interest on his claim for unreimbursed expenses at the New York statutory rate, under CPLR § 5004. The Court in its discretion will allow post-award, pre-judgment interest but at the federal rate under 28 U.S.C. § 1961, calculated on the published treasury yield. *See Luciano v. Olsten Corp.*, 912 F. Supp. 663, 676 (E.D.N.Y. 1996), *aff'd*, 110 F.3d 210 (2d Cir. 1997); *Cioffi v. New York Cmty. Bank*, 465 F. Supp. 2d 202, 222 (E.D.N.Y. 2006)

CONCLUSION

For the reasons set forth above, the award is CONFIRMED. Petitioner's application for prejudgment interest is DENIED.

The Clerk of the Court shall enter judgment accordingly and close this case.

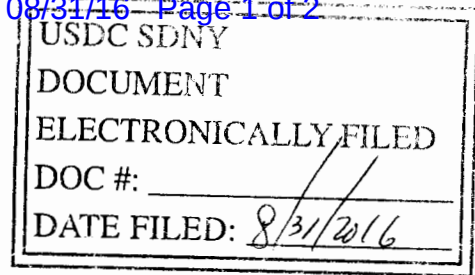
Dated: August 31, 2016



U.S.D.J.

BY ECF TO ALL COUNSEL

USDC SDNY
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DATE FILED: 0131/2016



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
RICK FITZGERALD, an individual,
Petitioner,

15 CIVIL 6796 (CM) (FM)

-against-

JUDGMENT

THE BONDFACTOR COMPANY, LLC,
a Delaware limited liability company;
BUTCHERMARK FINANCIAL ADVISORS,
LLC, a Delaware limited liability company; and
GEORGE H. BUTCHER, III, an individual,
Respondents.
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Petitioner Fitzgerald seeks to confirm the Arbitrator’s award and seeks pre-judgment interest at the New York’s statutory rate of 9% per annum on the award of unpaid wages, liquidated damages, and attorneys’ fees and costs; on February 10, 2015, the Arbitrator entered a Partial Final Award (“PFA”) awarding Petitioner damages in the amount of (i) \$76,578.45 in unpaid wages under the FLSA; (ii) an additional \$76,578.45 as liquidated damages under the FLSA, pursuant to 29 U.S.C. § 216(b); (iii) \$3,302.86 in unreimbursed business expenses, plus prejudgment simple interest at the New York statutory rate of 9% accruing from January 15, 2014; on May 13, 2015, the Arbitrator entered the Final Award, which restated the damages awarded in the PFA, and awarded Petitioner an additional (iv) \$98,875 in attorneys’ fees pursuant to the FLSA, 29 U.S.C. § 216(b); and (v) \$17,978.46 in costs, and the matter having come before the Honorable Colleen McMahon, United States District Judge, and the Court, on August 31, 2016, having issued its Memorandum Decision and Order confirming the award, denying Petitioner’s application for prejudgment interest, and directing the Clerk of the Court to enter judgment accordingly and close this case, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Memorandum Decision and Order dated August 31, 2016, the award is confirmed; the

Petitioner's application for judgment is denied; accordingly, judgment is hereby entered in favor of Petitioner as against the Respondents in the total sum of \$273,313.22 and the case is closed.

Dated: New York, New York
August 31, 2016

RUBY J. KRAJICK

Clerk of Court

BY:



Deputy Clerk

**THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON 9/1/2016**