

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF EMPIRE STATE
CARPENTERS ANNUITY, APPRENTICESHIP,
LABOR-MANAGEMENT COOPERATION,
PENSION and WELFARE FUNDS,

**REPORT AND
RECOMMENDATION**
15-CV-2547 (ADS)(SIL)

Petitioners,

-against-

PISGAH BUILDERS, INC.,

Respondent.

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LOCKE, Magistrate Judge:

Presently before the Court on referral from the Honorable Arthur D. Spatt is Petitioners motion for a default judgment, or, alternatively, for confirmation of an arbitration award. *See* DE [14]. By way of a petition (“Petition”) dated April 28, 2015, Petitioners commenced this action pursuant to Section 502 of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132; Section 301 of the Labor Management Relations Act of 1947 (“LMRA”), 29 U.S.C. § 185; and Section 9 of the Federal Arbitration Act, 9 U.S.C. § 9, seeking to confirm a January 22, 2015 Collection Award and Order (the “Award”) rendered pursuant to a collective bargaining agreement between the Northeast Regional Council of Carpenters (the “Union”) and Respondent Pisgah Builders, Inc. (“Respondent” or “Pisgah”). *See* Docket Entry (“DE”) [1] at ¶ 1. Pisgah did not answer the Petition or otherwise appear in the action, and a Certificate of Default was issued on December 14, 2015. *See* DE [10]. On January 7, 2016, Petitioners filed the instant motion. DE [11]. On January 8, 2016, the Honorable Arthur D. Spatt referred that motion to this Court

for a Report and Recommendation as to whether the default judgment should be granted and, if so, whether damages should be awarded. *See* DE [14]. For the reasons set forth herein, it is respectfully recommended that the Award be confirmed and Petitioners be awarded the outstanding amount of the award of \$25,108.19 plus \$2,507.87 in attorneys' fees and costs, for a total of \$27,616.06.

I. BACKGROUND

The following facts are taken from the Petition and the Declaration in Support of Default Judgment and Order ("Burkle Decl."), and accompanying exhibits. *See* DE [1, 12]. Such facts are assumed true for purposes of this Report and Recommendation.

A. The Parties and Relevant Agreements

Petitioners, Trustees of the Empire State Carpenters Annuity, Apprenticeship, Pension and Welfare Funds (the "ERISA Funds"), are the trustees of multiemployer labor-management trust funds organized and operated in accordance with ERISA. *See* Pet. ¶ 4. Petitioners, Trustees of the Empire State Carpenters Labor Management Cooperation Fund (the "Labor Management Fund," and together with the ERISA Funds, the "Funds"), are trustees of a labor-management cooperation committee established under the LMRA. *Id.* at ¶ 5. At all relevant times, Respondent was an employer within the meaning of ERISA Section 3(5). *Id.* at ¶ 6.

Pisgah, a member of the Association of Wall Ceiling Carpentry Industries of New York, Inc. ("Association"), agreed to be bound to the Northwest Region Agreement (the "Collective Bargaining Agreement" or "CBA")¹ for the period of June

¹ The Court notes that Petitioners failed to submit an executed copy of the CBA. However, this is not fatal to the analysis of whether the arbitrator exceeded his scope of authority in issuing the

1, 2011 through May 31, 2016, entered into between the Association and the Union. *Id.* at ¶¶ 7-8. The CBA requires Respondent to contribute to the Funds for all work within the trade and geographical jurisdiction of the Union. *Id.* at ¶ 9. It further provides that “the Employer shall be bound by and shall comply with the agreements, declarations of trust, plans and/or regulations of the fringe benefit funds, and the labor management cooperation committees, so designated.” *Id.* at ¶ 10.

To facilitate employer contributions, the trustees of the Funds established a Joint Policy for Collection of Delinquent Contributions (the “Collection Policy”). *Id.* at ¶ 11; *see also id.* at Ex. C (Joint Policy for Collection of Delinquent Contributions). Employers bound by the Collection Policy are required to submit to a payroll audit at the Funds’ request to ensure that the employer has made all required contributions for a relevant audit period. *See* Collection Policy §§ 1.1(C)(2); 4.1. If an employer fails to make all required contributions after proper notice, it must remit the outstanding contributions within 30 days. *Id.* at § 2.1(D). Pursuant to the Collection Policy, “[i]f the delinquent Contributions are not received within 30 days following the date of the notice described in Section 2.1(D), the Fund Office shall prepare a Notice to Arbitrate before the Fund’s designated arbitrator, J.J. Pierson” *Id.* at § 2.2(A). It further provides that Petitioners have “the right to require that a

Award, as Petitioners submitted a fully executed Collection Policy which also provides the arbitrator with the authority to arbitrate fringe contribution disputes. *See* Collection Policy, § 2.2; *Trs. of Empire State Carpenters Annuity v. Baywood Concrete Corp.*, No. 13-CV-6403, 2015 WL 5178154, at *7 (E.D.N.Y. Sept. 22015) (“[T]he Defendant does not dispute that those CBAs incorporate the Collection Policy, which clearly provide Pierson with the authority to arbitrate disputes over fringe contributions.”).

delinquent employer pay the cost of an audit, interest . . . , attorneys' fees, and any other expenses incurred by the Funds in determining the amount of a delinquency and in collecting a delinquency." *Id.* at § 1.1(C)(4).

B. Pisgah's Contribution Delinquency

Respondent failed to remit contributions to the Funds for the period of July 2014 through December 2014, for a total delinquency of \$122,793.47. *See* Pet. ¶¶ 15-16. In accordance with the Collection Policy, the Funds commenced an arbitration before their designated arbitrator. *Id.* at ¶ 18. Although Petitioners sent Respondent a Notice of Intent to Arbitrate Delinquency, Pisgah failed to appear at the arbitration hearing. *Id.*; Ex. E (Collection Award and Order) at 1. The arbitrator held a hearing and rendered an Award on January 22, 2015. *Id.* at ¶ 19. The arbitrator concluded that Respondent was in violation of the CBA and ordered Pisgah to pay Petitioners a total of \$141,849.00, which includes: (i) a contribution deficiency of \$122,793.47 for July 2014 through December 2014; (ii) \$1,836.63 in pre-Award interest on the deficiency at a rate of .75% per month; (iii) liquidated damages in the amount of \$15,568.90; (iv) attorneys' fees amounting to \$900.00; and (v) the arbitrator's fee of \$750.00. *Id.* at ¶ 20. In addition to these stated amounts, the arbitrator also awarded post-Award interest on the delinquent amount that remained outstanding at a rate of .75% per month, and interest at a rate of 10% "on any part of the attorneys' fees awarded and not paid within 30 days" *Id.* The arbitrator further held that the Funds were entitled to examine Respondent's books and records for the period of July

2014 through December 2014, and that Pisgah must pay for costs relating to the audit. *Id.* at ¶ 21.

C. Post-Arbitration Events

When Respondent failed to abide by the Award, Petitioners commenced this action seeking \$141,849.00, plus \$1,015.00 in attorneys' fees and costs incurred in connection with the Petition. *Id.* at 6. Pisgah was served with the summons and Petition, and when it failed to appear or otherwise respond, the clerk of the Court issued a Certificate of Default. *See* DE [10]. On August 7, 2015, the Funds received \$122,793.47 from "a general contractor for whom the Respondent performed work, representing payment in full of the principal deficiency shown as due in the Award." Burke Decl. ¶ 20. However, the amounts for interest, liquidated damages, attorneys' fees, and the arbitrator's fees were not paid and remain outstanding. *Id.* On January 7, 2016, the Funds moved for a Default Judgment seeking those outstanding amounts, specifically \$25,108.19 for pre- and post-Award interest, liquidated damages, attorneys' fees, interest on the attorneys' fees, and the arbitrator's award. *Id.* at ¶ 36. They further seek \$2,777.87 in attorneys' fees and costs incurred in connection with this action. *Id.*

II. LEGAL STANDARD

Plaintiffs have requested relief in the alternative—default judgment or confirmation of an arbitration award. The Second Circuit has held that "default judgments in confirmation . . . proceedings are generally inappropriate." *City of N.Y. v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 136 (2d Cir. 2011) (quoting *D.H. Blair &*

Co., v. Gottdiener, 462 F.3d 95, 109 (2d Cir. 2006)). The Court has further advised district courts to consider an unanswered petition to confirm an arbitration award “as an unopposed motion for summary judgment.” *D.H. Blair*, 462 F.3d at 110. The Second Circuit noted that that “Rule 55 is meant to apply to ‘civil actions,’ Fed. R. Civ. P. 2, where only the first step has been taken—*i.e.*, the filing of a complaint—and the court thus has only allegations and no evidence before it.” *Id.* at 107. Unlike the typical civil action governed by Rule 55, petitions to confirm arbitration awards “are motions in an ongoing proceeding rather than a complaint initiating a plenary action.” *Id.* at 108 (citation omitted). As such, proceedings to confirm an award are “generally accompanied by a record, such as an agreement to arbitrate and the arbitration award decision itself” and thus “the judgment the court enters should be based on the record.” *Id.* at 109.

It is therefore recommended that the motion be treated as an unopposed motion for summary judgment. *See, e.g., Trs. of Empire State Carpenters v. Town & Country Wood Flooring LLC*, No. 13-CV-0040, 2013 WL 4807110, at *1 (E.D.N.Y. Sept. 9, 2013). Treating it as an unopposed summary judgment motion, the court cannot grant the relief sought “without first examining the moving party’s submission to determine if it has met its burden of demonstrating that no material issue of fact remains for trial” and that the movant is entitled to judgment as a matter of law. *D.H. Blair*, 462 F.3d at 109-10 (internal quotation and citation omitted); *see generally Local 338 United Serv. Workers Union v. Advanced Ready Mix Corp.*, No. 12-CV-4811, 2013 WL 685447, at *2 (E.D.N.Y. Feb. 24, 2013); *Trs. of N.Y. City Dist. Council of*

Carpenters v. Premium Sys., Inc., No. 12 Civ. 1749, 2012 WL 3578849, at *3 (S.D.N.Y. Aug. 20, 2012) (citations omitted).

III. DISCUSSION

A. Confirmation of the Arbitration Award

Petitioners seek confirmation and enforcement of the Award, specifically of the outstanding damages amounting to \$25,108.19 for pre-Award interest, post-Award interest, liquidated damages, attorneys' fees, interest on attorneys' fees, and the arbitrator's fee. For the following reasons, the Court recommends that the Award be confirmed and that \$25,108.19 be awarded to the Funds.

It is well-established that “a court’s review of an arbitration award is ‘severely limited so as not to frustrate the goals of arbitration—namely, to settle disputes efficiently and avoid long and expensive litigation.’” *Trs. of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Cooperation, Pension & Welfare Funds v. Lazzaro Assocs., Inc.*, No. 12-CV-5651, 2014 WL 4175859, at *5 (E.D.N.Y. July 15, 2014) (quoting *Local 338 United Serv. Workers Union v. Advanced Ready Mix Corp.*, No. 12-CV-4811, 2013 WL 685447, at *2 (E.D.N.Y. Feb. 24, 2013)); *see also* *Trs. of Nat’l Org. of Indus. Trade Unions Ins. Tr. Fund v. Davis Grande Co.*, No. 03-CV-6229, 2006 WL 1652642, at *2 (E.D.N.Y. June 9, 2006) (“The scope of judicial review of an arbitration award is extremely narrow.”). Therefore, in “evaluating a petition to confirm an arbitration award, only a barely colorable justification for the outcome reached by the arbitrators is necessary to confirm the award.” *Trs. of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Cooperation, Pension & Welfare*

Funds v. Curtis Partition Corp., No. 14-CV-324, 2015 WL 852001, at *2 (E.D.N.Y. Feb. 11, 2015) (Report and Recommendation), *adopted by*, 2015 WL 852002 (E.D.N.Y. Feb. 26, 2015) (internal quotation and alteration omitted); *see also D.H. Blair & Co.*, 462 F.3d at 110 (“The arbitrator’s rationale for an award need not be explained, and the award should be confirmed if a ground for the arbitrator’s decision can be inferred from the facts of the case.”) (internal quotation omitted); *Trs. of Local 807 Labor Mgmt. Health Fund v. Express Haulage Co.*, No. 07-CV-4211, 2008 WL 4693533, at *5 (E.D.N.Y. Oct. 23, 2008) (“[I]n evaluating plaintiff’s petition to confirm the result of the arbitration, the Court need only ensure that the arbitrator had some grounds on which to grant the damages spelled out in the Award.”). Based on this limited role, “a court must confirm an arbitration award as long as it ‘draws its essence from the collective bargaining agreement and is not the arbitrator’s own brand of industrial justice.’” *Trs. of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Cooperation, Pension & Welfare Funds v. Fourmen Constr., Inc.*, No. 15-CV-3252, 2016 WL 146245, at *2 (E.D.N.Y. Jan. 13, 2016) (quoting *First Nat’l Supermarkets, Inc. v. Retail, Wholesale & Chain Store Food Emps. Union Local 338, Affiliated with the Retail, Wholesale & Dep’t Store Union, AFL–CIO*, 118 F.3d 892, 896 (2d Cir. 1997)).

The Funds have met their burden of demonstrating that there is no issue of material fact precluding summary judgment. Prior to issuing the Award, the arbitrator determined that Respondent was bound by the CBA, and, in violation of such agreement, was delinquent in payment of fringe benefit contributions totaling

\$122,793.47. *See* Collection Award and Order at 1-2. In addition to the principal deficiency, which has been satisfied, the arbitrator awarded interest then accrued at a rate of .75% per month in the amount of \$1,836.63, liquidated damages amounting to \$15,568.90, attorneys' fees amounting to \$900.00, and the arbitrator's fee of \$750.00. *See* Collection Award and Order §§ 1-3. Where an arbitration award "draws its essence from the collective bargaining agreement, the court must affirm the award so long as the arbitrator's decision is 'plausibly grounded in the parties' agreement.'" *Lazzaro Assocs., Inc.*, 2014 WL 4175859, at *5 (quoting *Wackenhut Corp. v. Amalgamated Local 515*, 126 F.3d 29, 31-32 (2d Cir. 1997)). Here, the Collection Policy, which was implemented under the CBA and executed by the parties, entitles Petitioners to interest on the contribution deficiency at a rate of .75% per month, liquidated damages, attorneys' fees, and the arbitrator's fee. *See* Collection Policy §§ 2.1(C); 6.1; 6.2; 6.3. Thus, the arbitrator's Award "draws its essence" from the CBA and provides more than "a barely colorable justification for the outcome reached," and should be confirmed.

The Funds also seek additional interest for unpaid contributions and attorneys' fees. In addition to the monetary amounts above, the arbitrator awarded post-Award interest "which may accrue on the delinquent contributions for such additional period they remain outstanding" at a rate of .75% per month and "interest at the rate of 10% from the date of this Award on any part of the attorneys' fees awarded and ordered that is not paid within 30 days" *See* Collection Award and Order §§ 1-2.

Petitioners calculate this amount to be \$5,965.16 and \$87.50, respectively. *See* Burke Decl. §§ 20-21.

Section 1132(g)(2)(B) of ERISA requires an award of interest on unpaid contributions. *See* 29 U.S.C.A. § 1132(g)(2)(B). Indeed, other cases have similarly awarded post-Award interest at a rate of .75% a month and interest on attorneys' fees at a 10% rate when awarded by an arbitrator. *See Trs. of Empire State Carpenters Annuity, Apprenticeship, Labor Mgmt. Co-op., Pension & Welfare Funds v. Blueridge Contracting, Inc.*, No. 13-CV-0044, 2014 WL 795626, at *5 (E.D.N.Y. Feb. 27, 2014); *Trs. of Empires State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Co-op., Pension & Welfare Funds v. Precision Concrete & Masonry, Inc.*, No. 12-CV-5645, 2013 WL 4761146, at *8 (E.D.N.Y. Sept. 3, 2013). As such, the Court recommends that \$6,052.66 in interest for both unpaid contributions and attorneys' fees be awarded.

Accordingly, for the reasons set forth above, the Court respectfully recommends that the Award be confirmed and the Funds be awarded \$25,108.19, inclusive of pre-Award interest, post-Award interest, liquidated damages, attorneys' fees, interest on attorneys' fees, and the arbitrator's fee.

B. Attorneys' Fees and Costs

Petitioners also seek to recover a total of \$2,777.87 for attorneys' fees and costs incurred in connection with this action. *See* Burke Decl. ¶ 36(3). For the reasons set forth herein, the Court recommends that the Funds be awarded \$2,507.87 in attorneys' fees and costs.

1. Attorneys' Fees

Petitioners seek to recover \$2,230.00 in attorneys' fees payable to the law firm Virginia & Ambinder LLP ("V&A"). The Collection Policy provides that, "[a]ttorneys' fees shall be due to the Fund from a delinquent employer at the hourly rate charged to the Fund for such services . . . for all time spent by Counsel in collection efforts" Collection Policy § 6.2. Moreover, in actions seeking to confirm arbitration awards, "when a challenger refuses to abide by an arbitrator's decision without justification, attorney's fees and costs may properly be awarded." *Int'l Chem. Workers Union (AFL-CIO), Local No. 227 v. BASF Wyandotte Corp.*, 774 F.2d 43, 47 (2d Cir. 1985); *see also Abondolo v. Jerry WWHS Co., Inc.*, 829 F. Supp. 2d 120, 130 (E.D.N.Y. 2011) ("[A] court may, in the exercise of its inherent equitable powers, award attorney's fees when . . . a party opposing confirmation of an arbitration award refuses to abide by an arbitrator's decision without justification.") (internal quotation omitted). To that end, courts in the Second Circuit have held that a "[f]ailure to appear at arbitration or the confirmation hearing may result in a grant of attorneys' fees on equitable grounds." *N.Y.C. Dist. Council of Carpenters Pension Fund v. Brookside Contracting Co., Inc.*, No. 07 Civ. 2583, 2007 WL 3407065, at *2 (S.D.N.Y. Nov. 14, 2007). Because Respondent failed to appear at the arbitration hearing and refused to abide by the arbitrator's decision, the Court recommends that the Funds be awarded reasonable attorneys' fees incurred with respect to the instant action.

The party seeking reimbursement of attorneys' fees bears the burden of proving the reasonableness and necessity of hours spent and rates charged. *See N.Y.*

State Ass'n for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1139 (2d Cir. 1983). In determining a reasonable attorneys' fees award, both the Supreme Court and the Second Circuit have held that "the lodestar—the product of a reasonable hourly rate and the reasonable number of hours required by the case—creates a 'presumptively reasonable fee.'" *Millea v. Metro-N. R.R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011) (quoting *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany*, 522 F.3d 182, 183 (2d Cir. 2007)); see also *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939 (1983) ("The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.").

For purposes of the lodestar, "[a] reasonable [hourly] rate is the rate that a reasonable, paying client would be willing to pay." *Barrella v. Vill. of Freeport*, 43 F. Supp. 3d 136, 189 (E.D.N.Y. 2014) (internal quotation omitted). Courts in the Second Circuit adhere to the forum rule, "which states that a district court should generally use the prevailing hourly rates in the district where it sits." *Joseph v. HDMJ Rest., Inc.*, 970 F. Supp. 2d 131, 155 (E.D.N.Y. 2013) (citing *Simmons v. New York City Transit Auth.*, 575 F.3d 170, 176 (2d Cir. 2009)). Courts in the Eastern District of New York award hourly rates ranging from \$200 to \$450 per hour for partners, \$100 to \$300 per hour for associates, and \$70 to \$100 per hour for paralegals. See *Ferrara v. CMR Contracting LLC*, 848 F. Supp. 2d 304, 313 (E.D.N.Y. 2012) ("In recent years, courts in this district have approved hourly fee rates in the range of \$200 to \$450 for partners, \$100 to \$300 for associates and \$70 to \$100 for paralegal assistants."). In

determining whether an hourly rate is reasonable, courts must take into account “the nature of [the] representation and type of work involved” *Bodon v. Domino’s Pizza, LLC*, No. 09-CV-2941, 2015 WL 3889577, at *8 (E.D.N.Y. June 4, 2015).

In support of their application, Petitioners submitted V&A’s contemporaneous time records. The records reflect 3.2 hours of work performed by V&A Counsel Elina Burke at an hourly rate ranging from \$225.00-\$300.00; 2 hours of work performed by V&A associate Nicole Marimon at an hourly rate of \$225.00; 5.8 hours of work by different individuals, which, based on the rate and the type of work, the Court assumes are legal assistants, at an hourly rate of \$100.00; and .9 hours of work by an individual identified as “CRV” at an hourly rate of \$300.00. *See* Burke Decl. ¶¶ 30-32; Ex. I (Contemporaneous Time Records). Ms. Burke and Ms. Marimon are 2011 and 2014 graduates of Fordham University School of Law, respectively, and both regularly represent multiemployer employee benefit plans in ERISA litigation. Burke Decl. at ¶¶ 30-31. Regarding Ms. Burke and Ms. Marimon, the Court finds that the amount of time spent, as well as the hourly rates billed by V&A, are reasonable. *See Fourmen Constr., Inc.*, 2016 WL 146245, at *5 (holding that 4.7 hours billed on unopposed petition to confirm an arbitration award was reasonable, and awarding hourly rate of \$225 to a V&A associate); *Trs. of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Cooperation, Pension & Welfare Funds v. Penco United, LLC*, No. 13-CV-4745, 2015 WL 1650960, at *3 (E.D.N.Y. Apr. 14, 2015) (awarding hourly rate of \$225 to V&A associates). The Court also finds 5.8 hours of work at an hourly rate of \$100.00 reasonable for legal assistants. *See Martone v. HST*

Roofing, Inc., No. 03-CV-4165, 2007 WL 595054, at *2 (E.D.N.Y. Feb. 22, 2007) (finding a rate of \$100/hr. for paralegals reasonable). However, the Court declines to grant an award for the .9 hours spent by “CRV” at an hourly rate of \$300.00, totaling \$270.00, as the Funds provided no substantiating information regarding CRV, including his or her name or title at the law firm.

Accordingly, the Court recommends that Petitioners be granted \$1,960.00 as an award of attorneys’ fees.

2. Litigation Costs

The Funds also seek to recover \$547.87 in litigation costs, including \$145.00 in service fees, \$400.00 for the court filing fee, and \$2.87 in postage. *See* Contemporaneous Time Records at 3. ERISA provides for the recovery of costs associated with litigation, *see* 29 U.S.C. § 1132(g)(2)(D), and “[a] court will generally award ‘those reasonable out-of-pocket expenses incurred by the attorney[s] and which are normally charged fee paying clients.’” *Finkel v. Jones Lang LaSalle Ams., Inc.*, No. 08-CV-2333, 2009 WL 5172869, at *6 (E.D.N.Y. Dec. 30, 2009) (quoting *Reichman v. Bonsignore, Brignati & Mazzotta, P.C.*, 818 F.2d 278, 283 (2d Cir. 1987)). Indeed, courts in this district allow for the recovery of service and filing fees in arbitration confirmation proceedings. *See, e.g., J.H. Reid Gen. Constr. Co.*, 2015 WL 8111121, at *5 (awarding \$475.00 to recover for the court filing fee and a service fee); *Abondolo*, 829 F. Supp. 2d at 130 (awarding service and filing fees). Moreover, the Award expressly provides that “the employer shall be responsible for all court costs including, but not limited to, the filing fee of \$400.00.” *See* Collection Award and

Order ¶ 9. Accordingly, the Court recommends that Petitioners be awarded \$547.87 to recover for service and filing fees and postage.

IV. CONCLUSION

For the reasons set forth herein, the Court respectfully recommends that: (i) the Award be confirmed; (ii) Petitioners be granted \$25,108.19 for pre- and post-Award interest, liquidated damages, attorneys' fees and interest on such, and the arbitrator's award; and (iii) Petitioners be granted \$2,507.87 for attorneys' fees and costs.

V. OBJECTIONS

A copy of this Report and Recommendation is being sent to Petitioners by electronic filing. Petitioners are directed to serve a copy of this Report and Recommendation on Respondent by certified mail, and to file proof of service with the Court. Any objections to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days. Failure to file objections within the specified time waives the right to appeal the District Court's order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 72; *Ferrer v. Woliver*, No. 05-3696, 2008 WL 4951035, at *2 (2d Cir. Nov. 20, 2008); *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
June 23, 2016

s/ Steven I. Locke
STEVEN I. LOCKE
United States Magistrate Judge