

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRUSTEES OF THE NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS PENSION FUND, WELFARE
FUND, ANNUITY FUND, AND APPRENTICESHIP,
JOURNEYMAN RETRAINING, EDUCATIONAL AND
INDUSTRY FUND, et al.,

Petitioners,

17 Civ. 4591 (DAB)
MEMORANDUM & ORDER

v.

PROFESSIONAL INSTALLATIONS, INC.,

Respondent.

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DEBORAH A. BATTIS, United States District Judge.

On June 19, 2017, Petitioners Trustees Of The New York City District Council Of Carpenters Pension Fund, Welfare Fund, Annuity Fund, and Apprenticeship, Journeyman Retraining, Educational and Industry Fund; Trustees Of The New York City Carpenters Relief and Charity Fund; New York City and Vicinity Carpenters Labor-Management Corporation; and New York City District Council of Carpenters¹ filed a Petition to Confirm an

¹ The Court refers to Trustees Of The New York City District Council Of Carpenters Pension Fund, Welfare Fund, Annuity Fund, and Apprenticeship, Journeyman Retraining, Educational and Industry Fund; Trustees Of The New York City Carpenters Relief and Charity Fund; and New York City and Vicinity Carpenters Labor-Management Corporation collectively as the "Funds." It refers to New York City District Council of Carpenters as the "Union."

Arbitration Award against Respondent Professional Installations, Inc. This case arises under the Employment Retirement Income Security Act, 29 U.S.C. § 1132(a)(3); the Labor Management Relations Act, 29 U.S.C. § 1985; and the Federal Arbitration Act, 9 U.S.C. § 9, to confirm and enforce an Arbitration Award stemming from a dispute over contributions pursuant to a collective bargaining agreement. Petitioners seek affirmation of the Award of \$14,749.65 in total plus additional fees, costs, and interest. For the following reason, the Petition is AFFIRMED.

I. BACKGROUND

Respondent is a signatory to an Independent Building Construction Agreement (the "CBA")² with the Union covering the period of July 1, 2001 through June 30, 2006. (Pet. ¶ 9.) Respondent signed an Extension and Compliance Agreement ("ECA") agreeing to continue to be bound by the CBA in 2015. (Id. ¶ 10.) Pursuant to the CBA, Respondent was required to remit contributions to the Funds when it performed work within the scope and geographic jurisdiction of the Union. (Id. ¶ 11; CBA Art. XV § 1.) The CBA also required Respondent to submit to

² Attached as Exhibit A to the Petition.

audits by the Funds to ensure that Respondent was making the required contributions. (Pet. ¶ 12; CBA Art. XV § 1.)

Pursuant to the CBA, Respondent became bound to the Funds' Collection Policy.³ (Pet. ¶ 13; CBA Art. XVI § 2.) The CBA and Collection Policy provided that, in the event the Funds were required to arbitrate a dispute or initiate a lawsuit to collect delinquent contributions, they would be entitled to collect, in addition to the unpaid contributions: (1) interest on the unpaid contributions at the prime rate of Citibank, plus 2%; (2) liquidated damages equaling 20% of the unpaid contributions; and (3) reasonable costs and attorneys' fees incurred by the Funds in collecting the contributions. (Pet. ¶ 14; Collection Policy § V.)

The Funds conducted an audit of Respondent which revealed a delinquency in contributions owed to the Funds. (Pet. ¶ 15.) When Respondent failed to remit the unpaid contributions, the Funds submitted the dispute to arbitration in accordance with the CBA's arbitration clause. (Pet. ¶ 16; CBA Art. XV §§ 6-7; Arbitration Award⁴ at 1-2.)

At the arbitration hearing, the Funds presented proof that Respondent had received sufficient notice of the hearing.

³ Attached as Exhibit C to the Petition.

⁴ Attached as Exhibit E to the Petition.

(Arbitration Award at 1.) Because Respondent failed to appear at the hearing, however, the Arbitrator found Respondent to be in default, and proceeded to receive evidence on the Funds' claims. (Id. at 2.)

The Arbitrator found that an accountant had performed an audit of Respondent's records in accordance with the CBA and with Respondent's consent. (Id.) Relying on the auditor's testimony, the Arbitrator also found that the audit had revealed delinquencies, that a copy of the Report of the audit had been forwarded to Respondent, and that Respondent had failed to comply with the Funds' subsequent demand for payment. (Id.)

The Arbitrator ultimately ruled in favor of the Funds, and ordered Respondent to pay the Funds the principal deficiency in the amount of \$8,130.64, interest of \$719.08, a liquidated assessment of \$1,626.13, a promotional fund fee of \$14.80, plus \$1,859 in audit costs, \$1,500 in attorney's fees, \$500 in arbitrator fees, and \$400 of court costs, for a total of \$14,749.65. (Pet. ¶ 18; Arbitration Award at 3.) The Arbitrator also found that interest of 5.75% would accrue on the Award from the date of its issuance. (Pet. ¶ 19; Arbitration Award at 3.)

Petitioners filed the instant case on June 19, 2017. (Pet.; ECF No. 1.) In addition to confirmation of the Arbitration Award, they seek \$1,117.50 in attorneys' fees, \$75.00 in costs,

and post-judgment interest. (Pet. at 6-7.) Although it was served on June 22, 2017 via the New York State Secretary of State (ECF No. 8), Respondent has not appeared in this action or otherwise responded to the Petition. On August 21, 2017, Petitioners filed an ECF letter requesting that the Petition be treated as an unopposed Motion for Summary Judgment. (ECF No. 9.)

II. Discussion

A. Federal Arbitration Act

Under the Federal Arbitration Act, the Court must affirm the award "unless the award is vacated, modified." 9 U.S.C. § 9. "Normally, confirmation of an arbitration award is 'a summary proceeding that merely makes what is already a final arbitration award a judgment of the court.'" D.H. Blair & Co. v. Gottdiener, 462 F.3d 95, 110 (2d Cir. 2006) (quoting Florasynth, Inc. v. Pickholz, 750 F.2d 171, 176 (2d Cir. 1984)). "Arbitration awards are subject to very limited review," Folkways Music Publishers, Inc. v. Weiss, 989 F.2d 108, 111 (2d Cir. 1993), with the party moving to vacate the award carrying the burden of proof. D.H. Blair, 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. Only a barely colorable justification for the

outcome reached by the arbitrators is necessary to confirm the award." Id.; see also Trs. of N.Y.C. Dist. Council of Carpenters Pension Fund v. Dejl Sys., Inc., No. 12 Civ. 005 (JMF), 2012 WL 3744802, at *3 (S.D.N.Y. Aug. 29, 2012) ("Where . . . there is no indication that the arbitration decision was made arbitrarily, exceeded the arbitrator's jurisdiction, or otherwise was contrary to law, a court must confirm the award upon the timely application of any party.").

B. Legal Standard for Summary Judgment Motion

An unanswered petition to confirm an arbitration award is to be treated "as an unopposed motion for summary judgment." D.H. Blair, 462 F.3d at 110.

A court should grant summary judgment where there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Genuine issues of material fact cannot be created by conclusory allegations. Victor v. Milicevic, 361 F. App'x 212, 214 (2d Cir. 2010). Summary judgment is appropriate only when, after drawing all reasonable inferences in favor of a nonmovant, no reasonable juror could find in favor of that party. Melendez v. Mitchell, 394 F. App'x 739, 740 (2d Cir. 2010).

In assessing when summary judgment should be granted, "[t]he mere existence of a scintilla of evidence in support of

the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Jeffreys v. City of New York, 426 F.3d 549, 553 (2d Cir. 2005) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). The nonmovant may not rely upon speculation or conjecture to overcome a motion for summary judgment. Burgess v. Fairport Cent. Sch. Dist., 371 F. App'x 140, 141 (2d Cir. 2010). Instead, when the moving party has documented particular facts in the record, "the opposing party must come forward with specific evidence demonstrating the existence of a genuine dispute of material fact." F.D.I.C. v. Great Am. Ins. Co., 607 F.3d 288, 292 (2d Cir. 2010). Establishing such evidence requires going beyond the allegations of the pleadings, as the moment has arrived "to put up or shut up." Weinstock v. Columbia Univ., 224 F.3d 33, 41 (2d Cir. 2000) (quoting Fleming James, Jr. & Geoffrey C. Hazard, Jr., Civil Procedure 150 (2d ed. 1977)).

C. Confirmation of the Arbitration Award

The Court has conducted a limited review of the CBA, ECA, Collection Policy, and the Arbitration Award. The arbitrator was acting within the scope of his authority, as granted to him by those agreements. (CBA Art. XV §§ 6-7.) There is no basis for overturning the Award, as it is based on "undisputed evidence

that Respondent failed to make contributions to the Funds in breach of the CBA." Trustees of the N.Y.C. Dist. Council of Carpenters Pension Fund v. N.Y.C. Constr. Serv. Inc., No. 15-cv-3813-GHW, 2016 WL 894551, at *2 (S.D.N.Y. Mar. 8, 2016).

Further, "[b]ecause Respondent declined to contest the information submitted to the arbitrator or the final award, Petitioners' evidence that the arbitrator was, at the very least, arguably construing or applying the contract, is uncontested." Trustees of the N.Y.C. Dist. Council of Carpenters Pension Fund v. Golden Dev. and Constr. Corp., No. 17-CV-1051 (VSB)(JLC), 2017 WL 2876644 , at *4 (S.D.N.Y. June 6, 2017) (internal quotation marks omitted). Thus, there is much more than a "barely colorable justification" for the Arbitrator's conclusions. See D.H. Blair, 462 F.3d at 110.

Based on the record provided, together with the appropriate narrow level of review, the Court accordingly finds that there is no disputed material issue of fact and confirms the arbitration award.

D. Attorneys' Fees and Costs

The CBA provides that, "[i]n the event that formal proceedings are instituted before a court of competent jurisdiction by [the Funds] to collect delinquent contributions to such Fund(s), and if such court renders a judgment in favor

of such Fund(s), the [Respondent] shall pay[,]" among other things, "reasonable attorney's fees and costs of the action." (CBA Art. XV § 6(a).) The Funds' Collection Policy also provides for an award of attorneys' fees and costs against a delinquent employer for time spent by counsel in collection efforts. (Collection Policy § 5.)

The starting point in analyzing whether claimed attorneys' fees are reasonable is "the lodestar—the product of a reasonable hourly rate and the reasonable number of hours required by the case." Millea v. Metro-N. R. Co., 658 F.3d 154, 166 (2d Cir. 2011). "[C]ourts have routinely awarded attorneys['] fees in cases where a party merely refuses to abide by an arbitrator's award without challenging or seeking to vacate it through a motion to the court." Abondolo v. H. & M. S. Meat Corp., No. 07 CIV. 3870 (RJS), 2008 WL 2047612, at *4 (S.D.N.Y. May 12, 2008) (collecting cases). In order to support their request for attorney's fees, Petitioners must submit "contemporaneous time records . . . specify[ing], for each attorney, the date, the hours expended, and the nature of the work done." N.Y.S. Ass'n for Retarded Children, Inc. v. Carey, 711 F.2d 1136, 1148 (2d Cir. 1983).

Given that Respondent has not abided by the arbitration award and has failed to participate in this action, the Court finds an award of attorneys' fees and costs is appropriate.

Petitioners were represented by Virginia and Ambinder, LLP ("V&A") and have submitted copies of V&A's contemporaneous billing records. Petitioners seek \$150.00 for .5 hours worked by Todd Dickerson, who is Of Counsel at V&A, and a 2013 graduate of the University of Illinois College of Law, at a rate of \$300.00 per hour. (Pet. ¶ 26; Pet. Ex. F.) They also seek \$967.50 for 4.3 hours worked by Julie Dabrowski, a 2014 graduate of American University's Washington College of Law who is an associate at V&A, at a rate of \$225.00 per hour. (Pet. ¶ 25; Pet. Ex. F.)

Other judges in this District have found that \$225.00 per hour is reasonable for associates performing similar work. See Trustees of the N.Y.C. Dist. Council of Carpenters Pension Fund v. Jessica Rose Enters. Corp., No. 15-CV-9040 (RA), 2016 WL 6952345, at *5 (S.D.N.Y. Nov. 28, 2016); N.Y.C. Constr. Serv., 2016 WL 894551, at *3 (collecting cases). The Court finds that that rate was reasonable for the work by Julie Dabrowski, and that the number of hours she worked was also reasonable.

However, other courts in this District have found that a \$300.00 hourly rate for an attorney who has been practicing for four years is unreasonable and that an "Of Counsel" title does not warrant an increase from \$225.00 per hour to \$300.00 per hour. See Golden Dev., 2017 WL 2876644, at *5 (collecting cases and awarding a \$225.00 rate to Todd Dickerson in July 2017). Accordingly, the Court finds it appropriate to reduce Todd

Dickerson's rate to \$225.00 per hour, but finds that the .5 hours allotted was reasonable. The Court thus awards a total of \$1,080 to Petitioners for attorneys' fees.

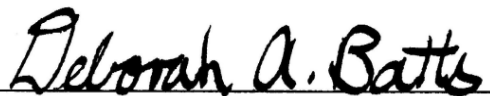
Petitioners also seek to recover \$75.00 in service fees in connection with this case. (Pet. ¶ 35.) "Recovery of such costs is routinely permitted." N.Y.C. & Vicinity Dist. Council of Carpenters v. Plaza Constr. Grp., Inc., No. 1:16-CV-1115-GHW, 2016 WL 3951187, at *2 (S.D.N.Y. July 19, 2016) (collecting cases). The Court thus awards \$75.00 to Petitioners for costs incurred.

III. CONCLUSION

For the foregoing reasons, the Petition to Confirm the Arbitration Award is GRANTED. The Clerk of Court is directed to enter judgment in favor of Petitioners and against Respondent in the amount \$14,749.65, attorneys' fees of \$1,080.00, and costs of \$75.00, with interest to accrue at the annual rate of 5.75% from the date of the Arbitration Award to the date of the Judgment, and post-Judgment interest at the statutory rate pursuant to 28 U.S.C. § 1961.

SO ORDERED.

DATED: New York, NY
March 27, 2018


Deborah A. Batts
United States District Judge