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,

Petitioners,

- against -

ONEIDAVIEW PILE DRIVING INC.,

Respondent.
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REPORT AND RECOMMENDATION

CV 15-3357 (JS) (AKT)

A. KATHLEEN TOMLINSON, Magistrate Judge:

I. PRELIMINARY STATEMENT

Petitioners Trustees of Empire State Carpenters Annuity Apprenticeship Labor-Management Cooperation, Pension and Welfare Funds (collectively, "Petitioners" or "the Trustees"), commenced this action under Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1132(a)(3); Section 301 of the Labor Management Relations Act ("LMRA"), as amended, 29 U.S.C. § 185; and Section 9 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 9, petitioning the Court to confirm and enforce an arbitration award rendered pursuant to collective bargaining agreements between the Northeast Regional Council of Carpenters ("the Union") and Respondent Oneidaview Pile Driving, Inc. ("Respondent"). *See generally* Petition to Confirm An Arbitration Award ("Pet.") [DE 1]. Petitioners also seek pre-judgment interest on the arbitration award as well as an award of attorneys' fees and costs expended in bringing this action. *See generally id.* (Wherefore Clause).

To date, Respondent has neither responded to Petitioners' confirmation action nor sought any relief from the arbitration award.

On October 22, 2015, Judge Seybert referred the Petition to this Court for a Report and Recommendation "on whether the pending Petition should be granted and, if necessary, to determine the appropriate amount of damages, costs, and/or fees to be awarded." DE 6. Based upon the applicable law, the information submitted by Petitioners, and for the reasons stated below, the Court respectfully recommends to Judge Seybert that the Petition to confirm the arbitration award be GRANTED, and that judgment be entered against Respondent in the amount of $33,674.57. The Court further recommends that Petitioners' request for pre-judgment interest be DENIED, without prejudice, and that Petitioners' application for attorneys' fees and costs incurred in the prosecution of this action be GRANTED, to the extent set forth in this Report and Recommendation.

II. BACKGROUND

A. Factual Background

The following facts are taken from the Petition and the accompanying exhibits, and are assumed to be true. *See* DE 1.

The Empire State Annuity, Apprenticeship, Pension and Welfare Funds (the "ERISA Funds") are employer are part of multi-employer labor-management trust funds organized and operated in accordance with ERISA. Pet. ¶ 4. The Petitioner Trustees of the Empire State Carpenters Labor Management Cooperation Fund (the "LMRA Funds") are employer and employee trustees of a labor management cooperation committee established under Section 302(c)(9) of the LMRA, 29 U.S.C. § 186(d)(9). Pet. ¶ 5. Respondent is an employer covered by

ERISA with its principal place of business at 5701 East Circle Drive, Suite 375, Cicero, New York, 13039. *Id.* ¶ 6.

Respondent entered into two collective bargaining agreements ("CBAs") with the Union. *Id.* ¶ 7. The first CBA was for the period of June 1, 2006 through May 31, 2011 (the "2006-2011 CBA"). *See id.*; *see also* 2006-2011 CBA, annexed as Ex. A to Pet. [DE 1]. The second CBA was for the period of May 1, 2012 through April 30, 2015 (the "2012-2015 CBA"). *See* Pet. ¶ 7; *see also* 2012-2015 CBA, annexed as Ex. B to Pet. [DE 1]. The CBAs required Respondent to make contributions to the Funds for all work within the trade and geographical jurisdiction of the Union. Pet. ¶ 8; *see* 2006-2011 CBA, art. 17; 2012-2015 CBA, art. 11. The CBAs provide, *inter alia*, that "the Employer shall be bound by and shall comply with the agreements, declarations of trust, plans and/or rules, policies and regulations of the applicable Funds, so designated." 2006-2011 CBA, art. 17, § 3; *see* 2012-2015 CBA, art. 11, § 2(a); Pet. ¶ 9.

The Funds established a Joint Policy for Collection of Delinquent Contributions (the "Collection Policy"). Pet. ¶ 10; *see* Collection Policy, annexed as Ex. C to Pet. [DE 1]. The Collection Policy requires an employer to submit to a payroll audit upon request by the Funds in order to ensure compliance with the contribution requirements. Collection Policy §§ 1.1(C), 4.1 *see* Pet. ¶ 11. The Collection Policy further provides that disputes over contributions shall be subject to arbitration. Collection Policy § 2.2; *see* Pet. ¶ 17. If the employer is found deficient in its contributions, the Collection Policy permits the Funds to collect, in addition to the delinquent contributions, (1) interest on the unpaid contributions, *see* Collection Policy § 2.1(C); Pet. ¶ 12; (2) liquidated damages, *see* Collection Policy § 6.1.C; Pet. ¶ 13; (3) attorneys' fees, *see*

Collection Policy §§ 1.1(C), 6.2, 6.3; (4) audit costs, *see id.* §§ 4.6(C), 6.3; and (5) the costs of arbitration, *see id.* § 6.3.

Petitioners conducted an audit of Respondent for the period running from May 1, 2010 through December 31, 2013 to determine whether Respondent had complied with its obligations under the CBAs. Pet. ¶ 14. According to Petitioners, "[t]he auditor determined Respondent failed to remit contributions in the amount of $13,455.51." *Id.* ¶ 15. Petitioners assert that a dispute arose between the parties when Respondent failed to remit the contributions uncovered by the audit. *See id.* ¶ 16.

On March 11, 2015, Petitioners sent notice to Respondent demanding arbitration before the Funds' designated arbitrator, J.J. Pierson ("Arbitrator Pierson"). *Id.* ¶ 18; *see* Notice of Intent to Arbitrate Delinquency ("Arbitration Notice"), annexed as Ex. D to Pet. Arbitrator Pierson conducted a hearing on April 15, 2015, at which Respondent failed to appear. *See* Findings of Audit, Collection Award and Order ("Arbitration Award"), annexed as Ex. E to Pet.; *see also* Pet. ¶ 19.

On April 16, 2015, Arbitrator Pierson issued the Arbitration Award. *See generally* Arbitration Award. In his decision, Arbitrator Pierson noted that although Respondent had been issued "due notice" of the hearing, Respondent did not appear for the proceedings. *Id.* at p. 1. Based upon the evidence presented at the hearing, Arbitrator Pierson found that (1) Respondent is a signatory to the CBAs which require Respondent to remit contributions to the Funds on a monthly basis on behalf of employees performing work covered under the CBAs; (2) Respondent was bound by the CBAs during the payroll period running from May 1, 2010 through December 31, 2013; (3) pursuant to the CBAs and related trust agreements, an independent auditor had performed an audit of Respondent for the relevant time period; (4) the

Funds had presented the audit report[1] and a notice of the outstanding delinquency to Respondent; and (5) Respondent had not submitted payment to the Funds for the delinquent contributions. *See id.* ¶¶ 3-5, 7-8. Arbitrator Pierson concluded that Respondent violated the terms of the CBAs "by failing to make its required contributions" to the Funds from May 1, 2010 to December 31, 2013, and that Respondent was delinquent in the amount of $13,455.51. *Id.* ¶ 6. Citing the provisions of the Collection Policy, Arbitrator Pierson further determined that the Funds were entitled to recover interest, liquidated damages, audit costs, attorneys' fees, and an arbitrator's fee. *See id.* ¶ 9 (citing Collection Policy §§ 4.6, 6.1-6.3), ¶ 11.

Based on the foregoing findings, Arbitrator Pierson concluded that Respondent owed the Funds delinquent contributions "in the amount of $13,455.51 plus interest in the amount of $6,841.46; liquidated damages in the amount of $2,891.10; audit costs in the amount of $9,037.50; reasonable attorneys' fees in the amount of $900.00; and the Arbitrator's fee of $750.00." Arbitration Award ¶ 11; *see* Pet. ¶ 20. Arbitrator Pierson ordered Respondent to pay the total amount of $33,675.57 to the Funds "forthwith." Arbitration Award (Decretal ¶ 1).

According to the Petition, Respondent has failed to comply with the Arbitration Award directing payment of the foregoing amounts. Pet. ¶ 21. In addition, Respondent has not commenced an action seeking to vacate or modify the Award. *Id.* ¶ 22.

In view of the these allegations, the Petition requests that the Court: (1) confirm the Arbitration Award; (2) award judgment in favor of Petitioners and against Respondent in the amount of $33,675.57 pursuant to the Arbitration Award, "plus interest from the date of the

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[1] The Arbitration Award states that the audit report is as attached as "Exhibit A." *See* Arbitration Award ¶ 4. However, Petitioners have not provided a copy of the audit report in their exhibits accompanying the Petition. *See* DE 1.

award through the date of judgment"; (3) award judgment in favor of Petitioners and against Respondent in the amount of $805 in attorneys' fees and costs incurred in this litigation; and (4) award Petitioners such other and further relief as the Court deems just and proper. *Id.* (Wherefore Clause).

B. Procedural History

Petitioners commenced this action on June 9, 2015 by filing the Petition and a supporting memorandum of law. *See* DE 1; Memorandum of Law In Support of Petition to Confirm Arbitration Award ("Pets.' Mem.") [DE 2]. Petitioners effected service on the Respondent on June 11, 2015 by serving copies of the Summons, Petition, and Memorandum of Law on the New York Secretary of State. *See* DE 5. After Respondent failed to appear in this action or otherwise respond to the Petition, Judge Seybert issued an Order on October 22, 2015 referring the Petition to this Court for a Report and Recommendation "on whether the pending Petition should be granted and, if necessary, to determine the appropriate amount of damages, costs, and/or fees to be awarded." DE 6. That same day, Petitioners served a copy of Judge Seybert's Referral Order on Respondent. *See* DE 7.

III. LEGAL STANDARDS

A petition to confirm an arbitration award should be "treated as akin to a motion for summary judgment based on the movant's submissions." *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 109 (2d Cir. 2006). Although a party's "failure to contest issues not resolved by the record will weight against it," where, as here, the non-movant has not responded to the petition to confirm, the court "may not grant the motion "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 summary judgment. *Id.* at 109–10 (quoting

Vt. Teddy Bear Co., Inc. v. 1–800–BEARGRAM Co., 373 F.3d 241, 244 (2d Cir. 2004)); *see, e.g.*, *Travel Wizard v. Clipper Cruise Lines*, No. 06 Civ.2074, 2007 WL 29232, at *2 (S.D.N.Y. Jan.3, 2007) ("[E]ven where one party altogether fails to respond to a motion to vacate or confirm an award . . . district courts should assess the merits of the record rather than merely entering a default judgment."). "Even unopposed motions for summary judgment must 'fail where the undisputed facts fail to show that the moving party is entitled to judgment as a matter of law.'" *D.H. Blair*, 462 F.3d at 110 (quoting *Vt. Teddy Bear Co.*, 373 F.3d at 244).

"Nonetheless, in the context of a petition to confirm an arbitration award, the burden is not an onerous one." *N.Y.C. Dist. Council of Carpenters Pension Fund v. Angel Constr. Group, LLC*, No. 08 Civ. 9061, 2009 WL 256009, at *3 (S.D.N.Y. Feb.2, 2009); *cf. Trustees of Empire State Carpenters Annuity v. P & B Specialities Inc.*, No. CV 15-2053, 2015 WL 9943252, at *4 (E.D.N.Y. Dec. 14, 2015), *report and recommendation adopted*, 2016 WL 373966 (E.D.N.Y. Jan. 29, 2016) (stating that "the showing required to ***avoid*** summary confirmation of the award is very high") (emphasis supplied). The Second Circuit has "repeatedly recognized the strong deference appropriately due arbitral awards and the arbitral process, and has limited its review of arbitration awards in obeisance to that process." *Porzig v. Dresdner, Kleinwort, Benson, N. Am. LLC*, 497 F.3d 133, 138–39 (2d Cir. 2007); *see Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 388 (2d Cir. 2003) ("It is well established that courts must grant an [arbitrator's] decision great deference.

The confirmation of an arbitration award generally is "a summary proceeding that merely makes what is already a final arbitration award a judgment of the court." *D.H. Blair*, 462 F.3d at 109 (quoting *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984)) (internal quotation marks omitted). "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.'" *Id.* at 110 (quoting *Barbier v. Shearson Lehman Hutton, Inc.*, 948 F.2d 117, 121 (2d Cir. 1991)). "Only a 'barely colorable justification for the outcome reached' by the arbitrators is necessary to confirm the award." *Id.* (quoting *Landy Michaels Realty Corp. v. Local 32B–32J, Serv. Emps. Int'l Union*, 954 F.2d 794, 797 (2d Cir. 1992)).

"[T]he federal policy in favor of enforcing arbitration awards is particularly strong with respect to arbitration of labor disputes." *Supreme Oil Co., Inc. v. Abondolo*, 568 F. Supp. 2d 401, 406 (S.D.N.Y. 2008). The United States Supreme Court has recognized that the LMRA expresses a "'federal policy of settling labor disputes by arbitration,'" which "'would be undermined if courts had the final say on the merits of the awards.'" *United Paperworkers Int'l Union, AFL–CIO v. Misco, Inc.*, 484 U.S. 29, 36 (1987) (quoting *Steelworkers v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 596 (1960)). Accordingly, "[j]udicial review of a labor-arbitration decision pursuant to [a collective bargaining] agreement is very limited." *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509 (2001); *see also Willemijn Houdstermaatschappij, BV v. Standard Microsystems Corp.*, 103 F.3d 9, 12 (2d Cir.1997) (holding that "arbitration awards are subject to very limited review in order to avoid undermining the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation" (internal citation omitted)); *Abondolo*, 568 F. Supp. 2d at 405 (stating judicial review of an arbitration award under Section 301 of the LMRA is "extremely deferential").

When reviewing an award under Section 301 of the LMRA, 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.'" *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) (quoting *Misco*, 484 U.S. at 36); *see Int'l Bhd. of Elec. Workers, Local 97 v. Niagara Mohawk Power Corp.*, 143 F.3d 704, 714 (2d Cir.1998); *Beth Israel Med. Ctr. v. 1199/S.E.I. U. United Healthcare Workers E.*, 530 F. Supp. 2d 610, 614 (S.D.N.Y. 2008). "Courts are not authorized to review the arbitrator's decision on the merits despite allegations that the decision rests on factual errors or misinterprets the parties' agreement." *Major League Baseball Players Ass'n*, 532 U.S. at 509. "Even if the Court is convinced that the arbitrator 'committed serious error,' the award should not be vacated so long as the arbitrator is 'even arguably construing or applying the contract and acting within the scope of his authority.'" *Abondolo*, 568 F. Supp. 2d at 405 (quoting *Misco*, 484 U.S. at 38–39); *see Major League Baseball Players Ass'n*, 532 U.S. at 509 (holding that "improvident, even silly, factfinding does not provide a basis for a reviewing court to refuse to enforce the award") (internal quotation marks omitted) (quoting *Misco*, 484 U.S. at 39).[2]

Although the Federal Arbitration Act ("FAA")

> does not apply to "contracts of employment of . . . workers engaged in foreign or interstate commerce," 9 U.S.C. § 1, . . . federal courts have often looked to the Act for guidance in labor arbitration cases, especially in the wake of the holding that § 301 of the [LMRA] . . . empowers the federal courts to fashion rules of federal common law to govern "[s]uits for violation of contracts between an employer and a labor organization" under the federal labor laws.

[2] "Courts have shown similar judicial restraint regarding arbitration awards under ERISA." *Trustees of The New York City Dist. Council of Carpenters Pension Fund v. TNS Mgmt. Servs., Inc.*, No. 13-CV-2716, 2014 WL 100008, at *2 (S.D.N.Y. Jan. 10, 2014) (collecting cases); *Trustees of New York City Dist. Council of Carpenters Pension Fund, Welfare Fund, Annuity Fund, Apprenticeship, Journeyman, Retraining, Educ. & Indus. Fund v. Mountaintop Cabinet Mfr. Corp.*, No. 11-CV-8075, 2012 WL 3756279, at *2 (S.D.N.Y. Aug. 29, 2012) (same).

United Paperworkers, 484 U.S. at 40 n. 9 (internal citation omitted); *see N.Y.C. Dist. Council of Carpenters Pension Fund v. B & A Interiors, Ltd.*, No. 07 Civ. 5620, 2009 WL 233969, at *2 (S.D.N.Y. Jan.23, 2009). The FAA "provides expedited judicial review to confirm, vacate, or modify arbitration awards." *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 576 (2008). Under Section 9 of the FAA, a court "must" confirm an arbitration award unless it is vacated, modified, or corrected as prescribed under Sections 10 and 11 of the FAA. *See* 9 U.S.C. § 9; *Hall*, 552 U.S. at 576. Specifically,

> Section 10 lists grounds for vacating an award, including where the award was procured by "corruption," "fraud," or "undue means," and where the arbitrators were "guilty of misconduct," or "exceeded their powers." Under § 11, the grounds for modifying or correcting an award include "evident material miscalculation," "evident material mistake," and "imperfect[ions] in [a] matter of form not affecting the merits."

Hall, 552 U.S. at 576 (citing 9 U.S.C. §§ 10-11).

IV. <u>DISCUSSION</u>

A. Confirmation of the Arbitration Award

Here, Petitioners seek confirmation of the Arbitration Award as issued, in the sum of $33,675.57. *See* Pet. (Wherefore Clause); Pets.' Mem. at 7. Included in this sum are the following amounts awarded by Arbitrator Pierson: (1) $13,455.51 in delinquent contributions to the Funds; (2) $6,841.46 in interest on the delinquent contributions; (3) $2,891.10 in liquidated damages; (4) $9,037.50 in audit costs; (5) $900.00 in attorneys' fees; and (5) $750.00 for the cost of arbitration. Arbitration Award ¶ 11; *see* Pet. ¶ 20.

Considering Petitioner's submission in light of the foregoing case law, the Court concludes that Petitioners have met their burden of demonstrating that there is no genuine issue of material fact precluding summary judgment on their Petition to confirm the Arbitration

Award. Arbitrator Pierson's decision provides more than "a barely colorable justification for the outcome reached." *D.H. Blair*, 462 F.3d at 110. Although Respondent did not participate in the arbitration proceedings, Arbitrator Pierson noted that Respondent had been provided due notice of the hearing as well as notice of its delinquent contributions. Arbitration Award at p. 1; *id.* ¶ 7; *see* Pet. ¶ 18; Arbitration Notice, Ex. D, Pet. In his findings, Arbitrator Pierson stated that Respondent was bound by the CBAs and, based on the evidence presented, determined that Respondent had violated the CBAs "by failing to make the required contributions to the funds between May 1, 2010 [and] December 31, 2013." Arbitration Award at p. 1, ¶ 6.

"Where an arbitrator's 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." *P & B Specialities*, 2015 WL 9943252, at *4 (internal quotation marks and citations omitted). Here, the Arbitration Award draws its essence from the CBAs, which require Respondent, among other things, to make contributions to the Funds for all work within the jurisdiction of the Union, and to comply with the Funds' "plans and/or rules, policies and regulations," such as the Collection Policy. *See* 2006-2011 CBA, art. 17; 2012-2015 CBA, art. 11; *see also* Pet. ¶¶ 8, 9. Moreover, Arbitrator Pierson's decision is grounded in: (1) the uncontroverted evidence presented at the hearing that Respondent failed to pay $13,455.51 in delinquent contributions to the Funds for the period of May 1, 2010 through December 31, 2013; and (2) the Collection Policy, which entitles the Funds to recover the additional amounts for interest, liquidated damages, attorneys' fees, audit costs, and the arbitrator's fee. *See* Arbitration Award p.1, ¶¶ 3-5, 7-8, 11; *see also Trustees of Empire State Carpenters Annuity v. Fourmen Constr.*, Inc., No. 15-CV-3252, 2016 WL 146245, at *3 (E.D.N.Y. Jan. 13, 2016) (confirming arbitration award which drew its essence from the CBA and was "based upon uncontroverted

evidence" that the respondent failed to pay delinquent contributions awarded by the arbitrator, and where the Collection Policy "entitles the Funds to recover the additional amounts for interest, liquidated damages, attorneys' fees, the arbitrator's fee, and audit costs"); *P & B Specialities*, 2015 WL 9943252, at *4 (confirming arbitrator's order which "draws its essence from the CBA and the Collection Policy").

The Trustees have not presented the Court with copies of all the materials Arbitrator Pierson relied upon in rendering the Arbitration Award, including the audit report. *See generally* Arbitration Award ¶¶ 4-6. However, "there is no reason to doubt the arbitrator's interpretation of those materials." *Trs. of N.Y.C. Dist. Council of Carpenters Pension Fund v. Dejil Sys., Inc.*, No. 12-CV-005, 2012 WL 3744802, at *3 (S.D.N.Y. Aug. 29, 2012). Based on the record before him, Arbitrator Pierson determined that Defendant violated the CBAs by failing to make the required contributions to the Funds for the period of May 1, 2010 through December 31, 2013. *See* Arbitration Award ¶ 6. As a result, Arbitrator Pierson directed Respondent to pay the delinquent contributions owed to the Funds, as well as additional amounts which the Arbitrator determined the Funds were entitled to recover pursuant to the Collection Policy. *See id.* ¶¶ 9, 11. Although he possessed additional evidence not available to this Court, there is no indication that Arbitrator Pierson misinterpreted the materials available to him, that he made any miscalculations, or that he "otherwise acted arbitrarily, in excess of his power, or contrary to law." *Trs. of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Cooperation, Pension & Welfare Funds v. FMC Constr. LLC*, No. 13-CV-923, 2014 WL 1236195, at *12 (E.D.N.Y. Feb. 12, 2014), *report and recommendation adopted by* 2014 WL 1236195 (E.D.N.Y. Mar. 25, 2014) (finding no impropriety in arbitration award despite the court not possessing all evidence that was before the arbitrator); *see Dejil Sys.*, 2012 WL 3744802, at *3 (confirming

award where plaintiff did not submit all materials relied on by arbitrator); *Mountaintop Cabinet*, 2012 WL 3756279, at *4 (same).

Finally, "there is no evidence that the Arbitrator's decision was arbitrary, exceeded his authority, was procured by fraud, or was otherwise contrary to law. Nor has Respondent, who has failed to appear, challenged the Arbitrator's decision in any way." *1199/SEIU United Healthcare Workers E. v. S. Bronx Mental Health Council Inc.*, No. 13-CV-2608, 2014 WL 840965, at *8 (S.D.N.Y. Mar. 4, 2014) (citing *D.H. Blair*, 462 F.3d at 109 (noting that where a non-movant fails to respond to a motion to confirm an arbitration award, "its failure to contest issues not resolved by the record will weigh against it") *Laundry, Dry Cleaning Workers & Allied Indus. Health Fund v. Jung Sun Laundry Group Corp.*, No. 08–CV–2771, 2009 WL 704723, at *5 (E.D.N.Y. Mar. 16, 2009) (finding that failure to respond to motion to confirm arbitration award weighed against non-moving party)); *see also Fourmen Constr.*, 2016 WL 146245, at *3 (confirming award where "nothing in the record suggests that the arbitrator's award was procured through fraud or dishonesty or that any other basis for overturning the award exists") (internal quotation marks omitted). "Where, as here, 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." *Mountaintop Cabinet*, 2012 WL 3756279, at *4 (citing *In re Arbitration between Gen. Sec. Nat. Ins. Co. and AequiCap Program Adm'rs*, 785 F. Supp. 2d 411, 416–17 (S.D.N.Y. 2011)); *see also D.H. Blair*, 462 F.3d at 110 (stating that "the court 'must grant' the award 'unless the award is vacated, modified or corrected.'" (quoting 9 U.S.C. § 9)).

Accordingly, the Court respectfully recommends to Judge Seybert that the Petition to confirm the Arbitration Award be GRANTED, that the Arbitration Award be CONFIRMED in its entirety, and that judgment be entered against Respondent in the amount of $33,674.57.

B. Pre-Judgment Interest on the Arbitration Award

In their Petition, Petitioners request that the Court award them "interest from the date of the [Arbitration] Award through the date of judgment." Pet. (Wherefore Clause ¶ 2). Petitioners do not address this request in their memorandum of law, *see generally* Pets.' Mem., nor do they indicate in their submissions what rate should be applied to calculate pre-judgment interest on the Arbitration Award.

"The decision whether to grant prejudgment interest in arbitration confirmations is left to the discretion of the district court." *Abonodolo v. Milton Abeles, Inc.*, No. 10- CV-0494, 2010 WL 5491133, at *3 (E.D.N.Y. Sept. 9, 2010) *report and recommendation adopted in part* 2010 WL 5490877 (E.D.N.Y. Dec. 30, 2010) (quoting *Herrenknecht Corp. v. Best Rd. Boring*, No. 06-CV-5106, 2007 WL 1149122, at *1 (S.D.N.Y. Apr. 16, 2007)); *see Bldg. Material Teamsters Local 282, I.B.T. v. A Star Bus. Servs. of New York Corp.*, No. 11-CV-4646, 2012 WL 3568262, at *6 (E.D.N.Y. May 30, 2012) *report and recommendation adopted*, 2012 WL 3230481 (E.D.N.Y. Aug. 6, 2012) (collecting cases); *see also Blau v. Lehman*, 368 U.S. 403, 414 (1962). In the Second Circuit, there is "a presumption in favor of prejudgment interest." *Waterside Ocean Navigation Co. v. Int'l Navigation Ltd.*, 737 F.2d 150, 154 (2d Cir. 1984); *accord 1199/SEIU United Healthcare*, 2014 WL 840965, at *8; *Bldg. Material Teamsters*, 2012 WL 3568262, at *6. To determine whether to award pre-judgment interest, courts in this district have considered whether "the collective bargaining agreement provides that arbitration awards shall be 'final and binding.'" *Bldg. Material Teamsters*, 2012 WL 3568262, at *6 (quoting *Local 335,*

United Serv. Workers Union, IUJAT v. Roselli Moving & Storage Corp., No. CV 09-3853 JS ARL, 2010 WL 3283553, at *3 (E.D.N.Y. July 20, 2010) *report and recommendation adopted as modified*, 2010 WL 3257792 (E.D.N.Y. Aug. 13, 2010)); *see, e.g.*, *Local 282, Int'l Broth. of Teamsters v. Pile Foundation Const. Co., Inc.*, No. 09–CV–4535, 2011 WL 3471403, at *13–14 (E.D.N.Y. Aug.5, 2011); *Milton Abeles*, 2010 WL 5491133, at *3 ("There is a presumption in favor of prejudgment interest in the Second Circuit . . . particularly where the agreement between the parties states that an arbitration decision is final and binding, as it does herein.") (internal quotation marks and citations omitted); *accord 1199/SEIU United Healthcare*, 2014 WL 840965, at *8.

Here, neither of the CBAs clearly indicate that an arbitrator's award regarding fringe benefit contributions is final and binding. The 2006-2011 CBA sets forth procedures for grievances and arbitration of "any dispute arising from any provisions [of the CBA], . . . "with the exception of work jurisdiction." 2006-2011 CBA, art. 5, § 1. The agreement further states that the decision of an arbitrator "shall be find and binding on all parties concerned." *Id.*, art. 5, § 1(E). However, the Court notes that the procedures outlined in the 2006-2011 CBA appear to apply to disputes between the employer and the Union and/or Union employees, ***not*** disputes between the employer and the Funds. *See, e.g.*, *id.*, art. 5, § 2 ("During the term of this Agreement, and during the period of hearing grievance and arbitration, neither party shall order or permit any lockout, strike or other work stoppage or slowdown."). Notably, the 2012-2015 CBA sets forth similar grievance and arbitration procedures as the 2006-2011 CBA, but expressly states that these procedures do not apply to, *inter alia*, "Fringe benefit contributions." 2012-2015 CBA, art. 26, § 7(b). And while the Collection Policy provides that disputes over

unpaid contributions shall be subject to arbitration, *see* Collection Policy § 2.2, the Policy does not indicate that the arbitrator's decision shall be final and binding.

Petitioners do not address this issue in their submissions, nor do they indicate the rate at which pre-judgment interest should be calculated. *See* Pet. ¶¶ 4-5. Section 502(g)(2)(B) of ERISA provides that a court "shall award . . . interest on the unpaid contributions" and that such interest "shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of [the Internal Revenue Code]." 29 U.S.C. § 1132(g)(2). "For those plans that are not covered by ERISA, courts may exercise their discretion to determine the prejudgment interest rate." *Tr. of Local 7 Tile Indus. Welfare Fund v. Richard's Imp. Bldg., Inc.*, No. 12-CV-6143, 2013 WL 3967326, at *4 (E.D.N.Y. Aug. 1, 2013) (citing *Finkel v. Omega Communication Servs., Inc.*, 543 F. Supp. 2d 156, 162 (2d Cir. 2008)).

Here, Petitioners are comprised of the ERISA Funds and the LMRA Funds. *See* Pet. ¶¶ 4-5. The Collection Policy provides that interest on delinquent contributions be calculated at a rate of 0.75% per month, "compounded." Collection Policy § 2.1(C). Petitioners mention the 0.75% interest rate in the Petition, *see* Pet. ¶ 12, but it is unclear whether they are asking the Court to apply this rate to calculate pre-judgment interest, and whether they believe this rate should apply to unpaid contributions owed to both the ERISA Funds and the LMRA Funds. *See Richard's Imp. Bldg.*, 2013 WL 3967326, at *4 (E.D.N.Y. Aug. 1, 2013) ("Trustees seek the rates provided for in the Collection Policy[] for ERISA and non-ERISA plans alike, which I find to be appropriate.") (footnote omitted); *cf. Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Cooperation, Pension & Welfare Funds v. CMI Casework & Millwork, Inc.*, No. 14-CV-2891, 2015 WL 1198652, at *11 (E.D.N.Y. Mar. 14, 2015) (rejecting the plaintiffs' request for "additional interest at a rate of 9% per annum" and stating that

"[a]lthough Petitioners may be entitled to pre-judgment interest at the 0.75% interest rate provided for in the Collection Policy, no such argument has been presented in [their] moving papers"). Moreover, the Court points out that the 2012-2015 CBA states that employers shall be required to pay interest of 2% per month on unpaid contributions, *see* 2012-2015 CBA, art. 11, § 10, a directive which appears to conflict with the Collection Policy, *see id.*, art. 11, § 2(b) ("[I]n the event of any conflict between the . . . collection policies . . . and the terms of the collective bargaining agreement, the terms of the collective bargaining agreement shall prevail.").

In light of the foregoing analysis, the Court finds that, although Petitioners may be entitled to an award of pre-judgment interest on the unpaid contributions from the date of the Arbitration Award through the entry of final judgment in this case, they "have failed to present sufficient arguments to justify an award of prejudgment interest at this time." *Express Haulage Co.*, 2008 WL 4693533, at *6, n.7. Accordingly, the Court respectfully recommends to Judge Seybert that Petitioners' request for an award of pre-judgment interest be DENIED, without prejudice, and with leave to renew the application when it is supported by adequate explanation and documentation to substantiate the interest sought. The Court recommends that Plaintiffs be given a maximum of 30 days to provide the appropriately detailed interest information and calculation.

C. Attorneys' Fees and Costs

Petitioners also seek to recover $805.00 for attorneys' fees and costs incurred in this confirmation proceeding. *See* Pet. ¶¶ 24-32, Wherefore Clause ¶ 3. "The general rule in our legal system is that each party must pay its own attorney's fees and expenses." *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 550 (2010). "Ordinarily, attorney's fees cannot be recovered in a

federal action in the absence of statutory authority, and neither Section 301 of the LMRA nor the Federal Arbitration Act provides for attorney's fees in actions to confirm an arbitration award." *Dejil Sys.*, 2012 WL 3744802, at *4; *see Angel Constr. Grp.*, 2009 WL 256009, at *2 (S.D.N.Y. Feb. 3, 2009) (citing *Int'l Chem. Workers Union, Local No. 227 v. BASF Wyandotte Corp.*, 774 F.2d 43, 47 (2d Cir. 1985)). Section 502(g) of ERISA permits parties to recover reasonable attorney's fees and costs in association with actions to recover unpaid contributions. *See* 29 U.S.C. § 1132(g)(2)(D). "However, this does not necessarily mean that a successful party is also entitled to its costs and attorney's fees in bringing a petition to confirm an arbitration award." *Abondolo v. Jerry WWHS Co., Inc.*, 829 F.Supp. 2d 120, 130 (E.D.N.Y. 2011) (holding that ERISA authorizes award of costs, but not attorneys' fees, in arbitration confirmation proceedings); *accord TNS Mgmt. Servs.*, 2014 WL 100008, at *4; *Dejil Sys.*, 2012 WL 3744802, at *4. Nonetheless, "because a court may, in the exercise of its inherent equitable powers, award attorney's fees when opposing counsel acts in bad faith, attorney's fees and costs may be proper when a party opposing confirmation of an arbitration award 'refuses to abide by an arbitrator's decision without justification.'" *N.Y.C. Dist. Council of Carpenters Pension Fund v. E. Millenium Constr., Inc.*, No. 03–CV–5122, 2003 WL 22773355, at *2 (S.D.N.Y. Nov. 21, 2003) (quoting *Int'l Chem. Workers Union*, 774 F.2d at 47); *see, e.g.*, *TNS Mgmt. Servs.*, 2014 WL 100008, at *4 (citing cases); *1199/SEIU United Healthcare*, 2014 WL 840965, at *9 ; *Trustees of Nat'l Org. of Indus. Trade Unions Ins. Trust Fund v. Davis Grande Co.*, No. 03–CV–6229, 2006 WL 1652642, at *4 (E.D.N.Y. June 9, 2006) (citing *Nat'l Supermarkets, Inc. v. Retail, Wholesale and Chain Store Food Emps.*, 118 F.3d 892, 898 (2d Cir. 1997)).

Here, the Court need not decide whether Respondent refused to abide by the Arbitration Award without justification because the 2006-2011 CBA - - and the Collection Policy, which is

incorporated by referenced into both of the applicable CBAs - - explicitly obligate employers who fail to make timely contributions to the Funds to pay attorney's fees and costs incurred in recovering the delinquent contributions. *See* 2006-2011 CBA, art. 17, § 4; Collection Policy §§ 1.1(C)(4), 6.2. "The parties' agreements are a sufficient basis upon which to award attorneys' fees and costs." *Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Mgmt. Cooperation, Pension & Welfare Funds v. Thalle/Transit Const. Joint Venture*, No. 12-CV-5661, 2014 WL 5343825, at *2 (E.D.N.Y. Oct. 20, 2014) (holding that the CBA and the Collection Policy authorized award of attorney's fees and costs in action to confirm arbitration award) (citing, *e.g.*, *N.Y.C. Dist. Council of Carpenters Pension Fund v. Dafna Constr. Co., Inc.*, 438 F. Supp. 2d 238, 242 (S.D.N.Y. 2006)); *Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor Mgmt. Cooperation, Pension & Welfare Funds v. Sanders Constr., Inc.*, No. 13-CV-5102, 2015 WL 1608039, at *2 (E.D.N.Y. Apr. 10, 2015) (same); *accord Fourmen Constr.*, 2016 WL 146245, at *3. Accordingly, the Court concludes that Petitioners are entitled to recover attorney's fees and costs.

1. Attorney's Fees

Both the Second Circuit and the Supreme Court have held that "the lodestar method – 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-North R.R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011) (quoting *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany*, 522 F.3d 182, 183 (2d Cir. 2007)). The Court should determine the "presumptively reasonable fee" by looking to "what a reasonable, paying client would be willing to pay." *Arbor Hill*, 522 F.3d at 183-84.

"[W]hether the calculation is referred to as the lodestar or the presumptively reasonable fee, courts will take into account case-specific factors to help determine the reasonableness of the hourly rates and the number of hours expended." *Pinzon v. Paul Lent Mechanical Sys.*, No. 11 Civ. 3384, 2012 WL 4174725, at *5 (Aug. 21, 2012), *adopted by* 2012 WL 4174410 (E.D.N.Y. Sept. 19, 2012). These factors include:

> [T]he complexity and difficulty of the case, the available expertise and capacity of the client's other counsel (if any), the resources required to prosecute the case effectively (taking account of the resources being marshaled on the other side but not endorsing scorched earth tactics), the timing demands of the case, whether an attorney might have an interest (independent of that of his client) in achieving the ends of the litigation or might initiate the representation himself, whether an attorney might have initially acted *pro bono* (such that a client might be aware that the attorney expected low or non-existent remuneration), and other returns (such as reputation, etc.) that an attorney might expect from the representation.

Arbor Hill, 522 F.3d at 184. "The party seeking reimbursement of attorneys' fees must demonstrate the reasonableness and necessity of hours spent and rates charged." *Finkel v. Omega Comm'n Servs., Inc.*, 543 F. Supp. 2d 156, 164 (E.D.N.Y. 2008) (citing *New York State Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136 (2d Cir. 1983)).

To determine reasonable hourly rates, the Court notes this Circuit's adherence to the forum rule, which states that a district court should generally use the prevailing hourly rates in the district where it sits. *See Simmons v. N.Y. City Transit Auth.,* 575 F.3d 170, 175-76 (2d. Cir. 2009); *Polk v. N.Y. State Dep't of Corr. Servs.,* 722 F.2d 23, 25 (2d Cir. 1983); *see also Joseph v. HDMJ Restaurant, Inc*., No. 09 Civ. 240, 2013 WL 4811225, at *19 (E.D.N.Y. Sept. 9, 2013) (internal citations omitted); *Pinzon,* 2012 WL 4174725, at *5. Prevailing rates for experienced attorneys in the Eastern District of New York range from approximately $300 to $400 per hour. *Konits v. Karahalis*, 409 Fed. App'x 418, 422-23 (2d Cir. 2011) (summary order); *Claudio v.*

Mattituck-Cutchogue Union Free Sch. Dist., No. 09 Civ. 5251, 2014 WL 1514235, at *14 (E.D.N.Y. Apr. 16, 2014) (collecting cases). Some "[c]ourts have recognized slightly higher ranges in this district of $300–$450 per hour for partners." *Small v. New York City Transit Authority*, No. 09-CV-2139, 2014 WL 1236619, at *5 (E.D.N.Y. Mar. 25, 2014) (internal quotations omitted). "As for associates, courts in this district have concluded that approximately $200 to $300 is a reasonable hourly rate for senior associates, and that $100 to $200 is a reasonable hourly rate for more junior associates." *Sanders Constr., Inc.*, 2015 WL 1608039, at *3 (citing *Pall Corp. v. 3M Purification Inc.*, No. 97–CV–7599, 2012 WL 1979297, at *4 (E.D.N.Y. June 1, 2012); *see, e.g.*, *Small,* 2014 WL 1236619, at *5; *First Keystone Consultants, Inc. v. Schlesinger Elec. Contractors, Inc.*, 10-CV-696, 2013 WL 950573, at *7 (E.D.N.Y. Mar. 12, 2013) (finding that reasonable hourly rates in this district range from $200 to $300 for senior associates and $100 to $200 for junior associates).

In addition, to determine whether the number of hours spent by Petitioners' counsel was reasonable, the Court must "use [its] experience with the case, as well as [its] experience with the practice of law, to assess the reasonableness of the hours spent . . . in a given case." *Fox Indus., Inc. v. Gurovich*, No. 03-CV-5166, 2005 WL 2305002, at *2 (E.D.N.Y. Sept. 21, 2005) (quoting *Clarke v. Frank*, 960 F.2d 1146, 1153 (2d Cir. 1992)). A court should "exclude hours that were 'excessive, redundant, or otherwise unnecessary' to the litigation . . . ." *Cho v. Koam Medical Servs. P.C.*, 524 F. Supp. 2d 202, 209 (E.D.N.Y. 2007) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). A party seeking an award of attorney's fees bears the burden to document "the hours reasonably spent by counsel, and thus must support its request by providing contemporaneous time records reflecting, for each attorney and legal assistant, the date, the hours

expended, and the nature of the work done." *Cho*, 524 F. Supp. 2d at 209 (internal citations, quotation marks, and alteration omitted).

In the instant matter, Petitioners retained the services of Virginia & Ambinder, LLP ("V&A"), a law firm located in New York City. *See generally* Pet.; Pets.' Mem. V&A assigned two attorneys to the instant delinquent contributions matter: Associate Elina Burke and Associate Nicole Marimon. Pet. ¶¶ 26-27. Attorney Burke graduated from Fordham University School of Law in 2011 and regularly represents multi-employer employee benefit plans in ERISA litigation. *Id.* ¶ 26. Attorney Burke's time was billed at an hourly rate of $225. *Id.* Attorney Marimon is a 2014 graduate of Fordham University School of Law and is admitted to practice law in New York and New Jersey. *Id.* ¶ 27. Attorney Marimon's time was also billed at an hourly rate of $225. *Id.*

The Court finds that the $225 hourly rate requested for the services rendered by Associate Attorneys Burke and Marimon is above the range of rates typically approved by courts in this District for services rendered by junior associates in ERISA collections litigation, particularly for attorneys who graduated from law school in 2011 and 2014, respectively. *See, e.g.*, *Sanders Constr., Inc.*, 2015 WL 1608039, at *4 (in the context of a petition to confirm an arbitration award, finding $200 is a reasonable hourly rate for "a more junior associate" with five years' experience); *J & J Sports Prod., Inc. v. McAdam*, No. 14-CV-5461, 2015 WL 8483362, at *6 (E.D.N.Y. Dec. 9, 2015) (reducing hourly rate of an associate attorney with three years' experience from $250 to $200 "[i]n light of the rates typically approved in this district and the straightforward nature of this default judgment"); *Herrera v. Tri-State Kitchen & Bath, Inc.*, No. CV 14-1695, 2015 WL 1529653, at *15 (E.D.N.Y. Mar. 31, 2015) (reducing hourly rate of an associate attorney "only recently admitted to the bar" from $250 to $175); *Jean v. Auto and Tire*

Spot Corp., 09-CV-5394, 2013 WL 2322834, at *7 (E.D.N.Y. May 28, 2013) (reducing the hourly rate for an associate with four years' experience from $225 to $200); *Home Loan Inv. Bank, F.S.B. v. Goodness & Mercy, Inc.*, No. CV 10-4677, 2012 WL 1078963, at *6 (E.D.N.Y. Jan. 4, 2012) *report and recommendation adopted*, 2012 WL 1078886 (E.D.N.Y. Mar. 30, 2012) (reducing hourly rate of associate with two years of experience from $255 to $150). Therefore, the Court recommends that Attorney Burke's hourly rate be reduced to $200, and Attorney Marimon's hourly rate be reduced to $175.

To support their request for attorney's fees, Petitioners have submitted contemporaneous billing records annexed to the Petition. *See* Pet., Ex. F [DE 1]. The records submitted reflect that V&A's total billing was $337.50 for 1.5 hours of work. *See id.* Attorney Burke billed .5 hour at an hourly rate of $225, while Attorney Marimon billed 1.0 hour at an hourly rate of $225. *Id.* As noted, however, Attorney Burke's .5 attorney hours on this matter shall be multiplied by the reduced hourly rate of $200. *Id*. Moreover, the 1.0 hour billed by Attorney Marimon shall be multiplied by the reduced hourly rate of $175. *Id*. The contemporaneous time records describe the specific tasks performed on behalf of Petitioners, the initials of the attorney who performed those services, the dates on which the tasks were performed, and the amount of time expended. *See id.* These records evidence the reasonableness of the 1.5 hours of legal services expended and the Court does not find any unreasonable, excessive or unnecessary time that should be excluded. Accordingly, the Court finds that all 1.5 hours expended by Petitioners' law firm are properly included in the calculation of attorney's fees and that Petitioners are entitled to recover $100.00 for work completed by Attorney Burke ($200 x .5 hour) and $175 for work

completed by Attorney Marimon ($175 x 1.0 hour), for a total of $275.[3] Accordingly, the Court respectfully recommends that Petitioners be awarded $275 in attorneys' fees.

2. *Costs*

Petitioners also seek reimbursement of costs which total $467.50. *See* Pet. ¶ 31; Ex. F. Specifically, Petitioners seek to recover the $400 court filing fee and $67.50 in "service fees." *Id.*; *see also* Pets.' Mem. at 7.

Courts typically award "those reasonable out-of-pocket expenses incurred by the attorney and which are normally charged fee-paying clients." *Reichman v. Bonsignore, Brignati & Mazzotta, P.C.*, 818 F.2d 278, 283 (2d Cir. 1987); *Sheet Metal Workers Nat'l Pension Fund v. Evans*, No. 12-CV-3049, 2014 WL 2600095, at *11 (E.D.N.Y. Jun. 11, 2014). The docket reflects that Petitioners paid a $400 fee to file this action and were issued Receipt No. 0207-7799687. *See* June 10, 2015 Electronic Order. Additionally, the Affidavit of Service filed by Petitioners indicates that they paid a $40 fee to serve Respondent via the New York Secretary of State. *See* DE 5. This expense is reasonable and should be reimbursed. Although Petitioners assert that they have incurred $67.50 in "service fees" – a cost which is itemized on counsels' billings records, *see* Pet., Ex. F – they have not provided any supporting documentation other than the affidavit of service which appears on the docket. *See* DE 5. Accordingly, the Court recommends that Petitioners be awarded $40 for this expense, rather than $67.50. Therefore, the

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[3] The Petition states that "V&A billed the legal assistant' time at a rate of $100 per hour for work performed in connection with this action." Pet. ¶ 28. However, the contemporaneous billing records do not reflect any work performed by a legal assistant. *See* Pet., Ex. D. Nor does it appear that Petitioners are actually asking to be reimbursed for work performed by a legal assistant, since their request for attorneys' fees concerns only the work performed by Attorney Burke and Attorney Marimon. *See* Pet. ¶¶ 26-27, 30; Pets.' Mem. at 2 ("In this case, counsel for Petitioners billed the Funds for the services of associate attorneys at a rate of $225.00 per hour.")

Court respectfully recommends to Judge Seybert that Petitioners be awarded $440 in costs incurred in bringing this action.

V. CONCLUSION

For the foregoing reasons, this Court respectfully recommends to Judge Seybert that the Petition to confirm the Arbitration Award be GRANTED, that the Arbitration Award be CONFIRMED in its entirety, and that judgment be entered against Respondent in the amount of $33,674.57. The Court further recommends that Petitioners' request for pre-judgment interest be DENIED, without prejudice and with the right to renew the application within 30 days if counsel is able to support the request by adequate explanation a detailed interest calculation and documentation for the interest sought. Finally, the Court recommends that Petitioners' application for attorney's fees and costs incurred in bringing this action be GRANTED, and that Petitioners be awarded $275 in attorneys'' fees and $440 in costs.

VI. OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule 72 of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections. Such objections shall be filed with the Clerk of the Court via ECF. A courtesy copy of any objections filed is to be sent to the Chambers of the Honorable Joana Seybert, and to the Chambers of the undersigned. Any requests for an extension of time for filing objections must be directed to Judge Seybert prior to the expiration of the fourteen (14) day period for filing objections. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Beverly v. Walker*, 118 F.3d 900, 901 (2d Cir. 1997), *cert. denied*, 522 U.S. 883 (1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Petitioners' counsel is directed to serve a copy of this Report and Recommendation upon the Respondent forthwith by overnight mail and first class mail and to file proof of service on ECF.

SO ORDERED.

Dated: Central Islip, New York
February 5, 2016

/s/ A. Kathleen Tomlinson
A. KATHLEEN TOMLINSON