UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

JASON REINHART and CHRISTINA KNIGHT, on behalf of themselves and those similarly situated,

Plaintiffs,

v. CASE NO. 3:16-cv-439-J-39MCR

ASSET MANAGING GROUP, INC, a Florida Corporation, ASSISTAX, INC., a Florida Corporation, AMERITAX MEDIATION GROUP, INC., a Florida Corporation, and PAUL MOISE, Individually,

Defendants.
_____/

REPORT AND RECOMMENDATION[1]

THIS CAUSE is before the Court on Plaintiffs' Motion to Confirm Arbitration Award ("Motion") (Doc. 30), which was referred to the undersigned for a report and recommendation on October 15, 2018.[2] For the reasons stated herein, it is

[1] "Within 14 days after being served with a copy of [this Report and Recommendation,] a party may serve and file specific written objections to the proposed findings and recommendations." Fed.R.Civ.P. 72(b)(2). "A party may respond to another party's objections within 14 days after being served with a copy." *Id*. A party's failure to serve and file specific objections to the proposed findings and recommendations alters the scope of review by the District Judge and the United States Court of Appeals for the Eleventh Circuit, including waiver of the right to challenge anything to which no specific objection was not made. *See* Fed.R.Civ.P. 72(b)(3); 28 U.S.C. § 636(b)(1)(B); 11th Cir. R. 3-1; M.D. Fla. R. 6.02.

[2] Although the Motion does not comply with Local Rule 3.01(g), the Court will excuse the non-compliance in this instance only. If Defendants intended to oppose the

respectfully **RECOMMENDED** that the Motion be **GRANTED in part** and **DENIED without prejudice in part**.

This action was brought on April 13, 2016, pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, and the Florida Minimum Wage Act ("FMWA"), Fla. Stat. § 448.110 *et seq.*, for recovery of unpaid minimum wages, overtime compensation, liquidated damages, pre-judgment interest, attorneys' fees, and costs. (Doc. 1.) In lieu of filing a responsive pleading, on May 12, 2016, Defendants filed a motion to compel arbitration, pursuant to Section 27 of the employment agreements[3] entered into between Plaintiffs and Ameritax Mediation Group, Inc. in 2014. (Doc. 9.) On January 26, 2017, adopting the undersigned's report and recommendation, the Court granted Defendants' motion to compel arbitration and stayed this case pending the completion of the arbitration proceedings. (Doc. 20.)

Motion, they had more than adequate time to do so. As the time for filing an opposition has now passed, the Court will treat the Motion as unopposed.

[3] Section 27 provides as follows:

> Arbitration. Any dispute or claim arising out of or [in] relation to Employee's employment, termination of employment or any provision of this Agreement, whether based on contract or tort or otherwise . . . shall be submitted to arbitration pursuant to the commercial arbitration rules of the American Arbitration Association. This Agreement shall be governed by the United States Arbitration Act. *An arbitration award rendered pursuant to this Section shall be final and binding on the parties and may be submitted to any court of competent jurisdiction for entry of a judgment thereon.* The parties agree that neither punitive damages nor attorneys' fees may be awarded in an arbitration proceeding required by this Agreement.

(Doc. 30-1 at 8 (emphasis added).)

On August 16, 2018, a Final Award of Arbitrator was issued by Mattox S. Hair in Jacksonville, Florida. (*See* Docs. 29, 30.) The arbitrator concluded that Plaintiff, Jason Reinhart, was entitled to recover $9,200.27 in unpaid minimum wages and $693.82 in overtime compensation for a total sum of $9,894.09; Plaintiff, Christina Knight, was entitled to recover $4,140.08 in unpaid minimum wages and $910.03 in overtime compensation for a total sum of $5,050.11; and Plaintiffs were not entitled to any liquidated damages or attorneys' fees, but were entitled to their reasonable costs.[4] (Doc. 30-2 at 5-6.)

The Final Award of Arbitrator also provided for pre-judgment interest to be paid at the prevailing Florida statutory rate as follows: 5.05% from April 10, 2017, when the case was first initiated by the American Arbitration Association, to June 30, 2017; 5.17% from July 1, 2017 to September 30, 2017; 5.35% from October 1, 2017 to December 31, 2017; 5.53% from January 1, 2018 to March 31, 2018; 5.72% from April 1, 2018 to June 30, 2018; and 5.9% from July 1, 2018 through the date of the award. (*Id.* at 6.) It further provided for post-judgment interest to be paid at the prevailing Florida statutory rate of 5.97% from the date of entry of the award until the date the award is paid. (*Id.*) It stated that the award should be paid to Plaintiffs by Defendants within 45 days from the date of the award. (*Id.*) It also stated: "This award is in full and final settlement of all claims

[4] The arbitrator determined that "[t]he administrative fees of the American Arbitration Association totaling $2,050.00 as well as the arbitrator's compensation totaling $6,680.00 shall be borne as incurred." (Doc. 30-2 at 6.)

submitted to the arbitrator. All claims not expressly granted herein are hereby denied." (*Id.* at 7.)

On August 24, 2018, Plaintiffs filed the instant Motion, requesting an order confirming the August 16, 2018 Final Award of Arbitrator, pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 9. (Doc. 30.) Section 9 of the FAA provides as follows:

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

9 U.S.C. § 9.

The FAA "imposes a heavy presumption in favor of confirming arbitration awards." *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1288 (11th Cir. 2002); *see also Frazier v. CitiFinancial Corp.*, 604 F.3d 1313, 1320 (11th Cir. 2010)

("There is a presumption under the FAA that arbitration awards will be confirmed, and 'federal courts should defer to an arbitrator's decision whenever possible.'") (quoting *B.L. Harbert Int'l, LLC v. Hercules Steel Co.*, 441 F.3d 905, 909 (11th Cir.2006)); *Gianelli Money Purchase Plan & Trust v. ADM Investor Servs., Inc.*, 146 F.3d 1309, 1312 (11th Cir. 1998) ("Judicial review of arbitration awards is 'narrowly limited,' and the FAA presumes that arbitration awards will be confirmed."). "As a result, a court's confirmation of an arbitration award is usually routine or summary." *Riccard*, 307 F.3d at 1288. Awards, however, may be vacated on four grounds, as set forth in Section 10 of the FAA:

> (1) where the award was procured by corruption, fraud, or undue means;
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
> (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a). "The burden is on the party requesting vacatur of the award to prove one of these four bases." *Riccard*, 307 F.3d at 1289.

Here, the arbitration provision in the parties' employment agreement provides that an arbitration award, rendered pursuant to that provision, "may be submitted to any court of competent jurisdiction for entry of a judgment thereon."

(Doc. 30-1 at 8.) This Court has jurisdiction to enter a judgment on the award as the award was rendered in this District. (*See* Doc. 30-2.) Defendants were served with the Motion to confirm the award and the Motion was filed well "within one year after the award [was] made." 9 U.S.C. § 9. Defendants have not responded to the Motion, the time for filing a response has passed, and it does not appear that the award has been, or should be, vacated, modified, or corrected. As such, the August 16, 2018 Final Award of Arbitrator must be confirmed. *See Washington Mut. Bank v. Century Mortg. Corp.*, No. CIVA 106-CV-2994-GET, 2006 WL 3762097, *1 (N.D. Ga. Dec. 20, 2006) (confirming an arbitration award where there were no grounds for vacating or modifying it and no objection was filed by the adverse party); *see also Frazier*, 604 F.3d at 1324 (finding that "the district court was bound by § 9 to confirm the award" where the movant "has failed to demonstrate the existence of any of the statutory grounds for vacating or modifying the arbitrator's award").

The Court notes, however, that although the arbitrator found Plaintiffs to be entitled to their "reasonable costs," neither the basis for awarding costs nor the amount of such costs has been presented to the Court. As such, to the extent Plaintiffs request that they be awarded their "reasonable costs," the request should be denied without prejudice.

Further, the Court notes that the arbitrator awarded pre-judgment interest at the prevailing Florida statutory rates, from April 10, 2017, when the case was

first initiated by the American Arbitration Association, through the date of the award. However, it appears that under both federal and Florida law, post-arbitral-award, not pre-award, pre-judgment interest is allowed. *See Indus. Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434, 1446-47 & n.18 (11th Cir. 1998); *Washington Mut. Bank*, 2006 WL 3762097 at *1; *Argonaut Ins. Co. v. May Plumbing Co.*, 474 So.2d 212, 215 (Fla. 1985). Thus, Plaintiffs should be awarded pre-judgment interest from August 16, 2018 at the prevailing Florida statutory rate. *See Argonaut Ins.*, 474 So.2d at 215.

Post-judgment interest is also appropriate, pursuant to 28 U.S.C. § 1961(a), from the date of the entry of the judgment, rather than from the date of the award as the arbitrator concluded. *See Washington Mut. Bank*, 2006 WL 3762097 at *1.

Accordingly, it is respectfully **RECOMMENDED** that:

1. The Motion (**Doc. 30**) be **GRANTED in part** and **DENIED without prejudice in part** as stated herein.

2. The August 16, 2018 Final Award of Arbitrator be confirmed to the extent the Clerk of Court be directed to enter judgment in favor of Plaintiffs, Jason Reinhart and Christina Knight, and against Defendants, Asset Managing Group, Inc., Assistax, Inc, Ameritax Mediation Group, Inc, and Paul Moise, for damages in the sum of $14,944.20, plus pre-judgment interest from August 16, 2018 to be

paid at the prevailing Florida statutory rate, and post-judgment interest from the date of the entry of the judgment pursuant to 28 U.S.C. § 1961(a).

3. The Clerk of Court be directed to close the file.

DONE AND ENTERED in Jacksonville, Florida, on November 16, 2018.

MONTE C. RICHARDSON
UNITED STATES MAGISTRATE JUDGE

Copies to:

The Honorable Brian J. Davis
United States District Judge

Counsel of Record